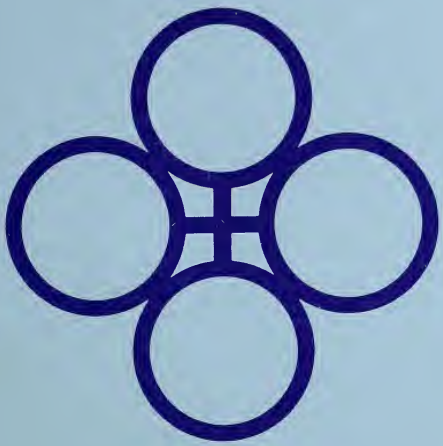


MONTANA WOMEN AND THE LAW

Montana Department of Labor
Labor Standards Division
Women's Bureau

1980

Acknowledgments

This book was prepared by Eleanor Parker, an attorney under a contract with the Women's Bureau of the Department of Labor and Industry.

Over 10,000 copies of MONTANA WOMEN AND THE LAW have been printed and circulated since the 1st printing in 1976. The time, energy and personal dedication given to this project is greatly appreciated by all Montanans.

Joan A. Duncan, Chief
Women's Bureau

Montana Women & the Law

Department of Labor & Industry
David E. Fuller

Women's Bureau
Joan A. Duncan, Chief

January 1980

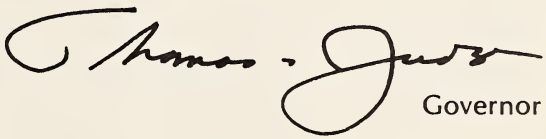
Contents

Preface

The Montana Women's Bureau has received many requests for information about the recent changes in state law, particularly affecting women, promulgated by the 1974, 1975, 1977, and 1979 legislatures. It became more and more apparent that there was a need for some written explanation of those changes which could be easily and widely distributed around the state.

This booklet, commissioned to answer that need, is not intended to be a full explanation of all the law in any given area—the Uniform Probate Code, for example—nor could it be. It is intended to cover only the changes in the law which were intended to eliminate sex discrimination or are of particular interest to women. Many people have been unaware of the amendments and additions to the law discussed here, and many others have been uncertain just what those changes were or how they themselves might be affected.

As is usually the case when sex discrimination is involved, men as well as women have benefited from some of the amendments. It is our hope that in some small way this booklet will help both men and women become more effective citizens, on their own behalf and on behalf of other.



Governor

Introduction

In 1972, Montana adopted a new constitution containing strong language protecting the rights of its citizens. The popularly-known "Equal Dignities Provision" is of particular importance, especially to women. The text is as follows:

"Article II, Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religous ideas."

Montana law at the time was peppered with provisions which discriminated against women, and which were clearly at odds with the new constitution. The legislature began working on the changes necessary, and in 1974 and 1975 passed several bills designed to correct existing discriminatory statutes, revise entirely whole categories of law, and provide new remedies for old problems particularly faced by women. The process continued during the 1977 and 1979 legislative sessions. This booklet contains an explanation of the major changes made each of those four years. It is bound to generate questions. We attempted to anticipate and answer the most obvious of them here, but to do that on any larger scale would have necessitated a booklet at least an inch thicker. Any of the agencies specifically mentioned within would be willing to field inquiries generated by this booklet to the best of their ability (as would I), or refer questioners to more authoritative sources. I hope what we have written will be of value to you.

ELEANOR PARKER
Attorney

NOTE: References to Section Numbers of the Law

As of January, 1979, the laws of Montana were officially recodified—in other words, they were reshuffled and renumbered into more logical order, and references to repealed laws were eliminated. The new recodification is referred to as the Montana Code Annotated (MCA), whereas the whole body of the Montana laws prior to January, 1979, was known as the Revised Codes of Montana, 1947 (the date referring to the last time similar recodification was done). The section numbers noted in the text, under chapter headings and in brackets after specific provisions are, by and large, references to the sections of the MCA in which those provisions may be found. A few sections are referred to using the old Revised Codes (RCM) number, either because they were repealed prior to the 1979 recodification or because reference is made to an older version of a subsequently amended statute. In those cases, the section numbers will be followed by "RCM, 1947" to show they must be looked up in the old codes. If you want to locate a given provision in the Revised Codes rather than the MCA, check the table on page 65 for the corresponding section number.

I. The Human Rights Act—Discrimination

[Sections 49-1-102 and 49-2-101 through 49-4-102]

In 1974, the legislature passed a package of laws popularly known as the Human Rights Act, and created the Human Rights Commission to administer them. Prior to that date, state law made freedom from discrimination on grounds of race, creed, color or national origin a civil right, denial of which was a misdemeanor as well as an issue upon which one could go to state court for a civil remedy, such as damages. [49-1-102, and 64-302 and 64-303, RCM 1947, the latter two repealed in 1974] However, the customary delay and cost of resorting to the state courts, plus the fact that few people knew the law existed, naturally deterred many people, particularly those of low income, from enforcing that right. The 1974 action made certain acts unlawful discrimination and created a vehicle, the Human Rights Commission, to which individuals could complain, and which would investigate complaints and prescribe and enforce a remedy for the discrimination, if it was found to exist.

Of particular importance to women, the 1974 laws included sex discrimination among the unlawful kinds of behavior and added it to the old civil right statue as well. The full coverage was basically as follows: Discrimination because of race, color, religion, national origin, **sex**, physical or mental handicap, or age was unlawful, but only in certain areas. Those were employment, education, some types of credit transactions involving financial institutions, housing, public accommodations, and government services. *(Note: Some sections of the Human Rights Act included "religion" as a category of prohibited discrimination, but left out "creed", while others did the reverse. Minor amendments in 1977 ensured that both "religion" and "creed" are listed in every case. The word "ancestry" was deleted where it appeared, because it meant the same as "national origin".)*

In 1975, three separate bills added to the Act, expanding its coverage. House Bill 633 was generally a housekeeping bill, clearing up

drafting defects in the 1974 law, but made a major substantive change by adding "marital status" to the prohibited kinds of discrimination. The effect is at least to prohibit discrimination against either men or women because they are married or single. Whether the provision will be read more broadly than that (for example, to ban refusal of employment to a woman because of who her husband is or what he does) depends upon the interpretation of the law by the Human Rights Commission and, ultimately, the courts. The Commission has, in one case, decided that failure to hire a teacher because she was living with a man not her husband amounted to unlawful discrimination on grounds of marital status. The 1979 legislature made an attempt to nullify that interpretation by defining "marital status" to exclude "cohabitation", but the bill did not pass (HB 774). Unfortunately (depending upon one's point of view), discrimination on grounds of marital status is still legal in the areas of housing and public accommodations, two areas where it is most common. (Also, it was not added to the old civil right statute—section 49-1-102) However, to the extent that marital status discrimination is at the same time **sex** discrimination (as where a landlord would rent to a single man but not to a single woman), the Commission would still have the power to prohibit it.

Senate Bill 7 filled a loophole in the portion of the Act prohibiting discrimination in credit transactions. The 1974 legislature banned discrimination by "financial institutions", but the definition was such that a great many usual kinds of credit transactions were not covered, such as those negotiated by department stores. The effect of SB 7 was to cover credit transactions with anyone extending any form of credit as a part of his or her business.

House Bill 8, otherwise known as the "Montana Code of Fair Practices", zeroed in on discrimination by government agencies and broadened the original coverage of the Act. The basic provisions follow:

(1) State and local governments (including schools, universities and commissions) must not discriminate in employment on grounds of race, color, religious creed, sex, age, national origin, physical or mental handicap, ancestry, **marital status** or **political ideas,** and have an affirmative duty, through education and review, to make sure there is no discrimination. [49-3-201]

(2) All state or local services are to be performed without discrimination. No governmental facilities can be used "to further any discriminatory practice" (which may include denying the use of a government building to private groups who discriminate), nor can any governmental agency become a party to any agreement or plan which

has the **effect of sanctioning** discriminatory practices. Each agency has the affirmative duty to ferret out such violations. [49-3-205]

(3) State or local contracts or subcontracts must include a provision prohibiting the contractor from discriminating in hiring on the same grounds forbidden to government agencies (listed at (1) above). [49-3-207]

(4) State or local placement services must not handle discriminatory job requests (as for young, female, non-Indian waitresses). [49-3-202]

(5) No license may be granted, denied, or revoked for discriminatory reasons (listed at (1) above). [49-3-204]

(6) No government agency may permit violation of the public accommodation provision of the Human Rights Act (49-2-303)—note that this provision does not prohibit discrimination on grounds of marital status or political belief). [49-3-208]

(7) Government education, counseling, apprenticeship or on-the-job training programs must be operated without discrimination [on the grounds listed in (1)] and with encouragement to disadvantaged groups. [49-3-203]

(8) State or local scholarships, loans, etc., must be granted on a non-discriminatory basis, and none must be granted to private organizations so discriminating. [49-3-206]

(9) All government agencies must cooperate with any educational or enforcement program designed by the Human Rights Commission and provide information requested by it. [49-3-202; 49-3-301]

(10) Violation of any part of the Code is grounds for a complaint to the Human Rights Commission. [49-3-303]

Complaints upon any of the grounds mentioned during this discussion may be filed with the Human Rights Commission, 300 Steamboat Block, Helena, simply by sending in a letter containing the names of the parties and describing the violation, or by using one of the Commission's complaint forms. Its staff will investigate to determine if unlawful discrimination in fact occurred, and if it has, try to informally reach a just solution (including back pay, for instance). If that is unsuccessful, the case may go to the Human Rights Commission for a ruling. A Commission finding of discrimination and prescription of a remedy is enforceable in district court.

The 1979 legislature added a provision potentially inhibiting to

complaining parties, allowing the prevailing party in a hearing before the Commission to collect attorney's fees from the opposing party. A prevailing party must go to district court to claim attorney's fees, and whether to grant them is within the discretion of the judge. The courts are unlikely to levy attorney's fees against someone who acted in good faith in bringing a complaint and has little money, but the chance is still there. [70-20-107] The result may be to deter people with complaints of discrimination from pursuing the matter through a Commission hearing because of the chance of having to pay the attorney's fees of the person or company they brought a complaint against.

More devastating in the long run may be the fact that the 1979 legislature reduced the budget of the staff of the Commission, the Human Rights Division, by 20%, resulting in a loss of four staff positions. More particularly, it left the Division with six fulltime employees, reduced three others from full to half-time positions, and caused the loss of one half-time secretary and one investigator altogether. Any extra federal money that might be forthcoming from the Equal Employment Opportunity Commission will not help since the legislature attached conditions to the appropriation mandating that for every dollar obtained from federal sources which was not anticipated at the time the legislature approved the state appropriation, one dollar must be deducted from the state funding. The effectiveness of the Commission has always depended largely upon the adequacy of its staff, which has had to process approximately 1100 complaints from 1975 through June of 1979. It remains to be seen whether this innovative tool in the struggle to eliminate discrimination will continue to have a cutting edge.

Finally, the Commission is scheduled for termination July 1, 1981, an event which may be forestalled only by an act of the 1981 Legislature reestablishing it. [2-8-101 through 2-8-122] Vocal public support at that point may be essential to its continued existence.

(Note: If a person is subjected to retaliation because of filing a complaint with the Commission, the Commission is empowered to treat the retaliation as a separate complaint and take action to stop it. Such retaliation is also a misdemeanor.)

II. Employment—Maternity Leave

[Sections 39-7-201 through 39-7-209]

Women have always had a peculiar problem maintaining employment that men do not share—they get pregnant. Pregnant women are denied jobs, and lose them when they become pregnant, with great regularity. Some employment leave policies do not permit pregnancy leave, even though leave for similar reasons, such as illness, may be permitted by the same policies. These and similar practices in effect handicap women who may be fully capable of performing the work they want or are doing in spite of their pregnancies. At the same time, the assumption of many employers that a pregnant woman is inevitably going to quit her job in the near future may in many individual cases be inaccurate, especially since many women cannot financially afford to leave their jobs.

The 1975 legislature passed House Bill 9, prohibiting public or private employers, or their agents, from doing the following [39-7-203]:

(1) firing a woman because of her pregnancy;

(2) refusing to grant a pregnant woman a reasonable leave of absence for her pregnancy;

(3) denying a woman compensation accrued by and due her under the employer's disability or leave plan, if she is disabled by her pregnancy;

(4) retaliating against an employee because she files a complaint under this law;

(5) requiring that an employee take a mandatory maternity leave for an unreasonable length of time.

Before a woman claiming disability because of pregnancy is allowed to collect compensation under an employer's disability or leave plan (see (3) above), she may be required by her employer to have her doctor

certify she is disabled. If a woman wants her job back at the end of her leave of absence, she is to be reinstated in her old job or in an equivalent one with equivalent pay, with no loss of seniority, fringe benefits, retirement, etc. However, **private** employers have been given a large loophole with which to avoid this last requirement—if the employer's circumstances have changed so much during the woman's leave of absence that it would be impossible or unreasonable to require the employer to reinstate her, he or she need not do so. What would constitute impossibility or unreasonableness is, of course, subject to interpretation and may generate considerable dispute.

The federal Civil Rights Act of 1964, as amended, administered by the Equal Employment Opportunity Commission, prohibits sex discrimination in employment. EEOC has long considered that dismissal from jobs or denial of employment on grounds of pregnancy, without proof that the woman in question is unable to do the work well because of her pregnancy, is in fact sex discrimination. In the same vein, EEOC has adopted guidelines stating that any health or leave plan sponsored by an employer that provides benefits for temporarily disabled employees should grant the same benefits to a pregnant woman needing leave for childbirth, recovery from childbirth, or complications resulting from pregnancy, just as any other temporarily disabled employee. The above interpretations were always subject to court challenge, and several such cases were recently decided by the U.S. Supreme Court. One decided that exclusion of pregnancy coverage from an employer's disability benefits does **not** constitute sex discrimination, and is therefore lawful, unless there is independent evidence that the exclusion was intended to disadvantage women. A later decision stated that a female employee taking maternity leave and returning to work may **not** be denied accrued seniority. The two cases are not easy to reconcile, and make it difficult to predict how other fact situations involving employment and pregnancy will be decided.

The Supreme Court decisions, however, interpreted federal law, and do not change the provisions of the Maternity Leave Act. That act explicitly requires an employer to grant disability benefits to an employee disabled by pregnancy, if a disability plan exists.

Complaints under this law are to be filed with the Commissioner of Labor and Industry, Capitol Station, Helena, Montana 59601, and should state the facts of the violation as completely as possible. The Commissioner's staff will investigate the complaint, free of charge. If they decide the law has been violated, they may order the appropriate remedy, such as reinstatement. The complaining party also has a right to go to state court to redress a violation of this act.

The 1979 legislature added some enforcement teeth to the Commissioner's order by giving the Commissioner of Labor the power to go to district court for an order enforcing the decision once the employer's time to appeal the decision is past (30 days after the decision). However, an amendment to the basic bill (HB 378) limited the Commissioner's power to do so to the period of 60 days after the decision, meaning the Commissioner must somehow determine within that period whether an enforcement order will be necessary. [39-7-209]

It should be noted that all acts of discrimination against pregnant women in employment may not clearly fit under the terms of the Maternity Leave Act. Those cases, and, for that matter, most cases of discrimination because of pregnancy, may constitute sex discrimination under the standards adopted by the Equal Employment Opportunity Commission and the state Human Rights Commission. If so, such somplaints can be filed with either or both of these two agencies.

(Note: EEOC can only handle cases involving employers with at least fifteen employees. The Human Rights Commission, on the other hand, has jurisdiction over any Montana employer, regardless of size.)

III. Sex Offenses

A. RAPE AND SEXUAL ASSAULT [Sections 40-2-109, 45-5-502, 45-5-503, 45-5-506, 46-15-401 through 46-15-403, and 46-15-411]

Old section 45-5-503, prohibiting sexual intercourse without consent, by its terms assumed that only men would commit that act, and only upon women. In 1975, the word "person" was substituted for "male" and "female", a change which in effect prohibited, in addition to the rape of a woman by a man, unconsented sexual intercourse between two men or between two women, and, at least theoretically, by a woman upon a man. The 1977 legislature eliminated the prohibition against homosexual rape by adding language requiring the non-consentual intercourse to be with a person of the **opposite** sex. [45-5-503(1)]

Wives should note that, until the 1979 legislative session, it was **not** unlawful to subject one's spouse to "sexual contact" or sexual intercourse without consent, **unless** they were living apart at the time pursuant to a court decree of separation. (45-5-502; 45-5-503; 45-5-506) (It should be noted that the foregoing exclusion of spousal assault and rape from the definitions of rape and sexual assault also applies to those living as husband and wife, regardless of whether they are considered husband and wife under the law.) The exclusion is now more limited; it does not apply if spouses are living apart for **any** reason, meaning that if one spouse subjects the other to sexual contact or intercourse without the latter's consent while they are living apart, a criminal offense has been committed. [45-5-506]

In addition, the common-law doctrine of interspousal tort immunity used to prevent one spouse from suing the other for restitution for injuries from a legal wrong such as assault. As of 1979, spouses may sue each other for intentional "torts" (legal wrongs), which would include assault. (40-2-109) The result, in the case of rape, is that a wife (or husband) may not bring a criminal charge against his or her spouse

unless they are living apart at the time, but **may** bring a **civil** action for monetary damages.

Also, the 1979 legislature stiffened the law where a young child was involved, making it legally impossible for a child under 13 years old to **consent** to sexual contact (and thereby immunize the perpetrator from prosecution) initiated by someone at least 15 years old and three or more years older. [45-5-502]

Another profound change has been the addition of protective legislation for the victims of rape. Under law prior to 1975, victims faced the risk of having their past sexual behavior dragged out in court and their general morality questioned. The result of such tactics was that many women were afraid to bring charges against a rapist, or were traumatized by the trial itself.

The attack on a woman's character reflected still prevalent belief that women "ask for" attacks and that a sexually active woman not only probably "invited" attack, but very likely was not attacked at all but only retaliating against a lover. Beliefs such as these have been increasingly under attack on grounds that female seductiveness does not justify a physical attack and that evidence of past sexual behavior (with people other than the defendant) is generally irrelevant to the issue whether an attack actually occurred.

The 1975 amendments reflected the above change in attitudes. The new protective provisions are as follows, including 1977 amendments:

"45-5-503 . . . (5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) Evidence of the victim's past sexual conduct with the offender;

(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(6) If the defendant proposes for any purpose to offer evidence described in subsection (5)(a) or (5)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (5).

(7) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim."

Subsection (7), in essence, directs the jury not to assume that the

victim is lying because she failed to cry out during the rape or to report it immediately thereafter.

New provisions were added in 1977 allowing rape victims to have their testimony videotaped and presented in court in their absence, so long as the prosecution concurs. In 1979, they were broadened to allow, in addition, videotaping in cases of sexual assault (touching rather than penetration) where bodily injury occurs or the victim is less than 16 and the offender three or more years older. [46-15-401] The provisions are as follows:

"46-15-401. When videotaped testimony admissible. For any prosecution commenced under 45-5-502(3) or 45-5-503, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

46-15-402. Procedure at videotaping.

(1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this act.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this act shall be allowed to attend the videotape proceedings.

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim."

Another new provision (1977) directs that if a law enforcement agency wants a medical examination of a rape victim for investigation or prosecution purposes, the agency is responsible for paying for the examination, though not for treatment of injuries resulting from the rape. [46-15-411]

The maximum penalty for rape is 40 years if the victim is less than 16 and the offender three or more years older, or the victim suffers bodily injury. Otherwise, the maximum is 20 years. The 1977 legislature added a **minimum** sentence of two years, unless one of the following circumstances existed at the time of the offense:

(1) The defendant was a minor;

(2) The defendant's mental capacity was impaired at the time of the offense, although not enough to prevent him from being prosecuted;

(3) The defendant acted under unusual and substantial duress, although not enough duress to prevent him from being prosecuted;

(4) The defendant was the accomplice of the major offender and his own involvement was relatively minor;

(5) No serious bodily injury was inflicted upon the victim; this exception is ineffective if a weapon was used in commission of the offense. (see section 46-18-222).

B. PROSTITUTION [Sections 45-5-601 and 45-5-603]

(1) **Prostitution.** The prostitution statute was adopted in 1973 as part of the new, revised criminal code. Since prostitution is committed by any "person" who "engages in or offers to engage in sexual intercourse with another person for compensation" it is possible for either a man or a woman to be guilty of it. In addition, the **patron** of a prostitute is guilty of prostitution under the terms of this statute, and is subject to the same penalties.

The 1975 amendments added a provision stating that the fact that money may not have changed hands is irrelevant to commission of the offense of prostitution. What matters is that compensation was understood. The pertinent subsection reads as follows:

"45-5-601 **Prostitution.** (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received, or paid or to be paid."

One additional change, however, was to the benefit of prostitutes, and potentially, other women, in that the provision making public loitering for prostitution purposes unlawful was eliminated entirely. The effect is to prevent the police from picking up women simply because they are loitering in public, on the suspicion that they are soliciting.

(2) **"Aggravated promotion of prostitution".** Aggravated promotion of prostitution included particularly outrageous acts, such as instigating the prostitution of a dependent family member or a **wife** (prior to the 1975 session). The section no longer prohibits only a **man** from promoting the prostitution of his **wife,** but outlaws the promotion by either husband or wife of the prostitution of his or her spouse. [45-5-603].

IV. Removal of Sex Discrimination From the Statutes— Miscellaneous Provisions

In preparation for the 1975 legislature, the Legislative Council searched through the Montana statutes for apparent instances where the law assumed or mandated that a given subject be male or female. Senate Bill 2 gathered together the changes necessary to eliminate miscellaneous cases of sex bias. Generally, in each case, masculine or feminine pronouns were replaced by neutral terminology. More substantive changes are listed briefly below:

1-1-201(2) Word "man" to include "woman". Whenever the words "man" or "men" or words containing the syllables "man" or "men" are used, they are to be regarded as including "woman" or "women" unless the context obviously implies otherwise.

1-5-206(1). Acknowledgments by married persons. Often, signatures to important papers must be "acknowledged"—in other words, the signor states that the signature is in fact his or hers, before a notary public. This particular statute was originally intended to correct the fact that a married woman's signature to a document historically was sometimes considered invalid, and formally declared the acknowledgment of a married woman's signature had to be accepted just as anyone else's would have been. The 1975 amendment changed "women" to "persons" and now reads: "the acknowledgment of a married person to an instrument purporting to be executed by such person must be taken the same as that of any other person." The practical effect of the amendment is probably minimal.

1-5-206(2). Conveyance by married person. This law formerly provided that a conveyance (transfer of title to land) by a married woman was valid, reflecting a change from past law restricting such rights in wives. As in 1-5-206(1) above, "woman" was changed in 1975 to "person", and now reads: "A conveyance by a married person has the

same effect as if such person were unmarried, and may be acknowledged in the same manner." Again, the practical effect is limited.

1-5-207. Form of certificate of acknowledgment by married person. The change was as in 1-5-206(1) and (2) above and the statute now reads: "The certificate of acknowledgment by a married person must be substantially in the form prescribed in 1-5-203."

2-2-302. Nepotism. This statute prohibits persons in supervisory positions in state government from hiring or appointing close relatives. The one exception has always been the allowance granted to a sheriff to appoint a relative to cook or take care of the jail, since sheriffs traditionally often utilized their wives for such purposes. The statute no longer requires that persons acting as cooks or attendants for jails be female.

7-3-4233. Nomination of candidates—primary election (municipal) The form of the nomination petition formerly referred to candidates as men, but now refers to "persons" instead.

7-4-4303(5). Powers of mayor. One of the mayor's powers was the right to call on every **male** citizen in case of civil disorders. The word "male" was eliminated, subjecting both men and women to the call.

7-21-2215. Laundries—licenses. The license fee does not apply to laundries employing no more than two people. Prior to 1975, the fee did not apply to businesses where no more than two **women** were employed.

7-32-2121. Duties of sheriff. The sheriff formerly could recruit the aid of male residents only. Now, women, as well, may be drawn upon.

10-2-102. Employees of board of veterans' affairs. Formerly, all male employees of the board and as many female employees as possible were to be honorably discharged veterans. Now, not all male employees need fit that qualification. The board need only hire veterans of either sex "whenever possible".

10-2-201 through 10-2-206. Veterans preference. All the provisions of this section that used to apply to wives and widows now apply to either spouse. The act provides employment preferences for veterans, their dependants, and their unremarried surviving spouses (formerly, widows only), and gives employment examination credits to disabled veterans, their spouses, their unmarried surviving spouses, and other dependants.

10-2-401. Persons eligible to live in Montana Veterans Home. In

addition to honorably discharged vets, the home, if it had room, could accept their wives and widows as well. Now, spouses of either sex have that privilege. A woman, in addition, prior to 1975, had to be at least 50 years old. That provision was eliminated.

10-2-501. Burial of deceased military men and women. This section, among other things, allowed $250 to be paid toward burial of any **female** resident of the Montana veterans' home, but not for a male resident. The 1975 amendment made the same benefit available to both men and women.

15-6-134 and 15-6-211. Classification of property for taxation. In old section 84-301, RCM 1947, Class Five property included, and thereby gave a tax break to, houses and lots owned and occupied by honorably discharged, 100% disabled veterans. The land stayed in that category after the veteran's death so long as the surviving spouse stayed on it, and did not remarry, Formerly, only a widow had that privilege. In 1977, section 84-301 was repealed, but the above provision was reenacted in new section 15-6-119. In 1979, section 15-6-119 was also repealed, but veterans' property is exempt from taxation under newly enacted section 15-6-211 so long as the veteran has an annual income of no more than $7000 if single or $8000 if married. If the property is occupied by the surviving spouse, the spouse must remain unmarried and have an income of no more than $7000 to retain the exemption.

Also, in old section 84-301, RCM 1947, Class Eight included real property improvements, trailers or mobile homes worth no more than $17,500 and belonging to, among others, widows or widowers, 62 or older, or widows or widowers of any age with minor or dependent children, whose annual income is no more than $4000. Prior to 1975, widowers had to be at least 65 to qualify, whether they had children dependent upon them or not. The 1975 legislature placed both widows and widowers on a par.

When 84-301 was repealed in 1977, Class 8 was changed to Class 15 (new section 15-6-116), the maximum property value was upped to $27,500, and the annual income level was raised to $6800. In 1979, section 15-6-116 in turn was repealed, replaced with new section 15-6-134, and the class number changed to Class 4. In addition, the tax break now applies to the first $35,000 or less and the annual income level was raised to $7000.

19-11-203. Use of fire dept. disability and pension fund. Payments to a surviving spouse, not widows alone, are now allowed.

19-11-502. Fire Dept. disability and pension fund. "His widow"

was changed to "surviving spouse", making any spouse eligible to receive from the fund.

Strangely, in 1977, the legislature substituted the noun and pronoun "him" and "his" for the word "fireman" in several places. The changes were part of a general revision and clarification of the laws relating to firemen. The above apparent reversal in policy may be a result of an attempt to simplify the text.

19-11-601. Fire Dept. benefits. A "surviving spouse", rather than a widow only, may now receive a pension.

19-11-605. Fire Dept. pensions for survivors. Same change as above.

19-12-405. Beneficiaries of volunteer firemen. Same change as above.

20-25-506. Student qualification—military training. Military training in the university system used to be limited to male students. Now, any able-bodied student can receive it.

25-5-201. When a married person is a party. This was another statute designed to correct old disabilities suffered by married women. It stated that married women could sue and be sued as if they were single. The statute now refers to married **persons,** rather than women.

25-5-202. In a civil action, when spouse may defend. This section allowed a wife to defend in her own right, when both husband and wife were sued at the same time, and to defend on her husband's behalf as well if he did not do so. The amendment allows either spouse to do the same.

25-9-102. Judgment for or against married person. This section used to provide that judgment against a married woman would be enforced as if she were single, but now refers to married "persons".

25-13-801. Who may redeem real property sold to satisfy judgment. When real property is sold to satisfy a judgment against its owner, in most cases the buyer's title is not absolute immediately, but is subject to "redemption" up to one year after the sale. In other words, certain persons have the right to buy it back during that time. Those persons include the "judgment debtor" (the former owner, against whom judgment was rendered in court) or the debtor's spouse. The section used to read "the judgment debtor [or] his wife...", which made little sense even in the context of pre-1975 law, since even then a wife could be sued and could have her own property sold to satisfy a judgment against her.

25-13-803 through 25-13-810. Redemptioner's rights—when purchaser entitled to deed—redeeming from spouse. The same changes were made here as in 25-13-801 above. If either the judgment debtor or his or her spouse redeems the property, the effect of the original sale is nullified. If the spouse redeems the property, the judgment debtor has another year to buy it from his or her spouse before the spouse has clear title to the property.

25-31-408. Service of summons. A summons for an action in justice court may be served by a sheriff, constable, or any resident of the state at least eighteen years old and not a party to the suit. Prior to 1975, the resident had to be male.

27-1-223. Support of family of person injured in duel. In the offside chance that a duel should occur, the person responsible for injuring or killing the other is obligated to support the latter's **spouse**. Such benefits are no longer restricted to widows or wives, implying that women may now feel free to fight duels with the assurance that their husbands may be provided for.

27-1-412. Agreements that cannot be specifically enforced. A court may sometimes require a broken contract to be carried out (specific performance) rather than assess damages only, when that is the only adequate remedy. The law also prohibits some kinds of contracts from being enforced that way. One of these was an "agreement to procure the act or consent of the **wife** of the contracting party." "Wife" now reads "spouse".

27-1-512. Parent or guardian may sue for injury or death of child or ward. The amendment equalized the right of either the mother or father to bring suit, as in 27-1-514(2), below.

27-1-514(1) and 27-1-515. Protection of personal relations. These old statutes prohibited, among other things, the abduction or enticement of a wife from her husband, the abduction (but apparently not the "enticement") of a husband from his wife, and the seduction of a wife, daughter, orphan, sister or servant. Abduction or enticement of either spouse is now unlawful, as is the seduction of a spouse, child, orphan, or servant. Sisters apparently have to watch out for themselves from now on.

27-1-514(2) Parent or guardian may sue for seduction of child or ward. The mother could bring this action, under former law, only if the father were dead or had deserted. Now, either parent may sue. In addition, seduction of either son or daughter, not only a daughter, now is actionable.

27-1-514(3). Unmarried person may sue for seduction. The law used to allow only women this right. Either men or women may now sue.

27-19-306. Security required after injunction granted. A judge may require a written promise on the part of the plaintiff to pay damages to the defendant should he eventually find the injuction was unmerited. However, some kinds of cases are exempted, including injunctions issued as part of divorce actions, brought by either spouse. The pre-1975 statute limited the exemption for injunctions pursuant to divorce actions to those brought by a wife against her husband.

27-31-101. How to apply for a name change. The petition for a name change must include a list of near relatives if neither parent is living. Prior to 1975, the list was necessary if the petitioner's **father** was dead, and by implication, even if the mother were still living.

31-1-306. Spouse must join in assignment of wages. Formerly, a married man couldn't assign his wages to a wage broker without the consent or acknowledged signature of his wife. Now, neither spouse may assign his or her wages without the consent of the other.

33-6-102(1). Definition of "benevolent association". The definition excluded, prior to 1975, ladies' auxiliaries to unions, railway brotherhoods, and lodges. The amendments excised "ladies".

33-7-104. Fraternal benefit societies—exemptions. As above, auxiliaries are no longer designated as "ladies". In this case, auxiliaries to organizations limited to members of one or more crafts or hazardous occupations are exempt from state insurance laws and the other provisions of the chapter governing fraternal benefit societies.

33-17-211. Application for license to be insurance agent or solicitor. The application requirements include showing whether the applicant had been licensed to handle insurance before, whether the license had ever been refused, suspended or revoked, whether any debts are claimed by an insurer or agent against the applicant, and whether the latter ever had an agency contract cancelled. Prior to 1975, a married woman had to provide duplicate information for her husband potentially jeopardizing her application should her husband have a bad record. The same burden was not laid on husbands with wives who may have been in the insurance business. The 1975 amendment required married people of either sex to provide the above information on their spouses. In 1979, the legislature deleted the requirement that spousal information be provided.

35-10-202. How to determine if a partnership exists. Subsection (4) states that there is **no** inference that a partnership exists if a person re-

ceiving a share of business profits is a surviving spouse. "Surviving spouse" replaced the word "widow" in the pre-1975 version of the statute.

35-10-502. Nature of partner's right in specific partnership property. Subsection (e) used to provide that, if a partner died, the other partners had a right to specific partnership property unaffected by the old rights of dower or courtesy (see discussion of dower in Chapter IX on the Uniform Probate Code), or allowances to widows, heirs, or next of kin. In other words, while a deceased partner's other property was subject to those rights and allowances, partnership property was not. The 1975 amendment reflected the elimination of dower and courtesy from the probate code, as well as deleting sex distinctions. The subsection now reads: "Provided the proceeds of a deceased partner's interest are included in the assets of the decedent's estate such property is not subject to a lien of the surviving spouse for his or her elective share, or a lien for, or allowances to surviving spouses, or next of kin."

39-2-201(1). Seats for employees. The pre-1975 statute was a classic piece of protective legislation for women, requiring businesses to provide seats for female employees. The amendment extended that privilege to men as well.

39-71-736. Workers' compensation—date payments begin. Until, 1979, this section provided that an injured employee, who has a beneficiary entitled to compensation should the employee die, shall not be paid the first week after an injury, but if the disability lasts longer than a week, he or she shall be paid from the date of injury. In the pre-1975 section, the beneficiaries were listed specifically—wife, child, father, mother, brother, sister—but only the general word 'beneficiary" was used thereafter. As amended in 1979, the section no longer refers to beneficiary but simply sets payment dates generally whenever an injury occurs.

39-72-102. Workers' compensation definitions—"husband" or "widower". The former definition of husband or widower, for the purposes of qualifying for compensation, included the stipulation that the man be incapable of supporting himself, a phrase not included in the definition of wife or widow. The 1975 amendment to section 92-1303, RCM 1947, deleted the incapacity phrase. In 1977, this section was repealed, but was replaced by section 39-72-102. The latter refers back to the definition of "husband" or "widower" in section 39-71-116(7), which had been amended in 1974 exactly as 92-1303, RCM 1947, was in 1975.

39-72-702. Workers' compensation—benefits payable. The changes allowed any surviving spouse (not just a widow) of a deceased

miner due benefits to receive them as well. This section was repealed in 1979, but section 39-72-406 does approximately the same thing.

46-6-402. Assisting a police officer. Police can now recruit the help of any adult person in order to make an arrest. Prior to 1975, the recruit had to be male.

69-11-208. Persons to whom free transportation may be given. Old and pensioned employees, their families, and widows were included on the list of people to whom public carriers could legally give free transportation, as were travelling secretaries of the YMCA. The 1975 amendment changed "widows" to "surviving spouses" and added the YWCA to the eligibility list.

70-15-303. Powers in relation to real property—married persons. A power in this context is the authority a person grants to another, by written instrument, to deal with real property on his or her behalf. Subsection (1) made it clear that a married woman could execute a power on her own, without her husband's consent. "Married woman" now reads "married person". Subsection (2) prohibited a married woman from executing a power before she reached the age of majority, but did not state the same for a married man. The subsection now reads: "No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority."

70-20-106. Grant of real estate. This section used to state that a married woman couldn't grant property to anyone without her signature being acknowledged as required by sections 1-5-206(1) and 1-5-207 (see discussion of those statutes above). Since those sections only required a married woman's signature to be accepted just as a married man's would be, and both men and women had to have their signatures acknowledged the same way, logically, this section should have applied equally to men and women. The 1975 amendment did that.

70-20-107. Power of attorney. The power of attorney of a married woman authorizing execution of papers transferring real property used to be invalid unless appropriately acknowledged (signed before a notary public to ensure the signor is who he says he is). The 1977 legislature changed the reference from "woman" to "person", so that it applies to any married man or woman.

70-27-111. Unlawful detainer—who is a "party defendant". Speaking simply, a tenant is guilty of unlawful detainer if he or she remains on property after the right to do so has been terminated. If the tenant is married, the spouse need not be sued as well, but if the spouse is not joined in the action, any judgment resulting from the suit can only be

enforced against the property owned separately by the tenant named as defendant, or against the property on the premises when the action began. The former version of this statute applied only to married **women** named as defendants.

71-3-302. Priority of wage claims when employer dies. Certain items are to be paid out of an employer's estate before the wage claims of employees, including the sum of money provided for support of the employer's family. Prior to 1975, the family included the "widow and infant children", which might have made it difficult for the husband of a female employer to claim the allowance. Now, any surviving spouse qualifies for the allowance.

71-3-503. Who is considered an owner of property (re: mechanic's liens) This section made clear that anyone for whose benefit property was constructed, repaired, or altered was to be considered the owner, specifically including persons about whom there might be question—such as guardians of minors and married **women.** The 1975 amendment changed "women" to "persons".

71-3-805. Who is considered an owner of a crop (re: thresherman's liens). Like section 71-3-503, the definition of owner, for the purpose of determining the ownership of threshed crops, now includes married persons, rather than married women.

35-409, RCM 1947. (not given MCA number because it is temporary) Housing for veterans. The law provides for acquisition and maintenance of housing facilities for veterans and their families. Until 1975, **widows** of veterans were allowed to use such housing; now, **surviving spouses** of dead veterans may live there, recognizing the possibility that such veterans might have been women.

V. Residence Rules

A. UNIVERSITY STUDENT FEES [Sections 20-25-503 and 20-25-504]

(Note: A legal presumption is an inference that courts will make under certain circumstances. If the inference is not true, it must be proved to be untrue.)

(1) **Married women.** Montana residents pay substantially lower fees to attend a branch of the state university system than non-residents, making residency status a valuable commodity. Prior to July 1, 1975, the law provided that, while a married woman's residence was presumptively that of her husband, she would not lose her resident status for tuition and fee purposes until four years after her marriage. [Sec. 75-8703(2), RCM 1947] If she happened to complete her university education during that period, the practical effect of the law on resident men and resident women was no different, since neither would have to pay non-resident fees. However, should such a married woman still be in school when the four-year period ran out, and if her husband remained a non-resident, she would be liable to pay non-resident fees, unless she managed to prove to the university registrar that she was in fact still a Montana resident. H.B. 5 amended Sec. 75-8703(2), RCM 1947, [now section 20-25-503(2)], eliminating the presumption about the residence of married female students altogether, leaving a simple statement that no resident student, male or female, who marries a non-resident, would lose, by that fact alone, his or her residency status for four years after marriage. Theoretically, since state law no longer contains any presumption about the residency of married women, once the four-year period runs out, both men and women should have to make the same proof of residence to the university they are attending, though it is apparent that since married women often change their names and men do not, men would find it much easier to conceal their marriages and avoid having to prove residency, should they choose to do so.

(2) **Minors.** An unemancipated minor, under prior law,

presumptively had the same residence as his or her father or guardian, and was regarded as sharing the mother's residence only if there was no father or the mother had legal custody of the minor after divorce or separation. If the facts were otherwise, they had to be proved. [Section 75-8703(1), RCM 1947.] Normally, under traditional family patterns, married parents would be living in the same place, and the old law's requirement that the minor have the residence of the father, where both parents remained married to each other, would make no practical difference. It is less and less rare, however, for married couples to maintain separate residences, usually because of the demands of their respective fields of work. The presumption that a minor's residence was his father's was eliminated in 1975, so that in the narrow case where a wife is a resident of Montana, her husband is not, and a minor child entering the university system lives with the mother and wants to claim the right to a resident's tuition and fees, there is no longer a need to defeat a legal presumption that the minor is **not** a resident, because the father is not.

The present wording of the statute, after amendments in 1977, is as follows:

"20-25-503...(1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that: (a) of the parents, or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or (b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state."

Corresponding language has been added to the statute laying out procedure for a change in residence status of a minor:

"20-25-504... A minor shall qualify for a change in status only if his parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom he customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth."

(3) **Montana high school graduates.** The statute making Montana high school graduates residents for fee and tuition purposes was amended to include language similar to that for minors, discussed above, recognizing the possibility that parents might be living apart and should be treated equally. The text is as follows:

"20-25-503...(7) Montana high school graduates are resident stu-

dents of the system for 4 consecutive years of attendance if: (a) they apply for admittance to the system within 1 year after graduation; or (b) their parents or parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation."

B. GENERAL RESIDENCE RULES [Sections 1-1-215 and 13-1-112]

(1) **Wives.** Women have been presumed, under the law, to reside with their husbands, a matter which has considerable impact on their right to run for office. For example, a female legislator from one Montana district who married a man from another district would be regarded legally as having become a resident of the latter district. If she wished to continue representing her former district, she had to prove that she continued to live and work there, a burden not shared by men under corresponding circumstances. That presumption is now eliminated entirely. [old section, now repealed: 83-303(5), RCM 1947]

(2) **Minors.** It used to be legally assumed that unmarried minors shared the residence of their fathers. Only when the fathers died did the mother's residence govern, and then only until she remarried (at which point her residence was presumptively that of her husband, as noted above). The statute failed to adequately cover situations such as divorce and the possibility that the mother might have custody, or the possibility that the parents might be informally maintaining separate residences.

The 1975 amendments recognize the above potential situations and treat both parents as equals. Whether a child lives with the father, mother, or both parents, exactly the same process is required to prove his or her residence.

The present text is as follows:

"1-1-215...(4) The residence of his parents or if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom he customarily resides, is the residence of the unmarried minor child. In case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor child."

(3) **People with families.** The rules for determining residence for

voting registration purposes applied to both sexes equally under prior law, with the exception of sec. 23-302(8), RCM 1947. That sub-section provided that a "man" was presumed to live with his family unless he in fact lived elsewhere. The amendment eliminated the masculine references and substituted neutral terminology. The practical effect of the change is minimal. [new section 13-1-112(8)]

VI. Head of Household

[Sections 36-102 and 21-113, RCM 1947]

Montana law dating back to 1895 made no bones about who was boss in a family. The text is worth quoting in full: **"36-102. Rights of husband as head of family.** The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto." In effect, the wife had to follow her husband wherever he chose to go, and go along with whatever enterprise or style of life he might elect, without whimper or question. To say the least, the law mandated less than an equal partnership in marriage.

A parallel provision (sec. 21-113, RCM 1947, now repealed) made failure on the part of the wife to conform to her husband's decision desertion and grounds for divorce.

Both provisions were repealed in 1975, and this archaic prescription for domestic bliss has given way to recognition of a woman's right to complain about or take part in decisions which fundamentally affect her.

VII. Protection of the Family Home—The Homestead Exemption

[Sections 70-32-102, 70-32-103, 70-32-105, 70-32-106, and 70-32-213]

The law provides protection for debtors and their familes in the form of a homestead exemption, which in effect protects the value of a family's residence and the land upon which it stands, up to a maximum of $20,000, from bankruptcy proceedings or from being used to satisfy money judgments against the debtor. The changes made in 1975 gave husband and wife equal opportunity and shared responsibility for choosing the homestead and applying for the exemption.

The changes are as follows:

70-32-102. The "head of the family" has the responsibility for applying for the homestead exemption and is defined in this section. Under the old law, the husband was the "head of family" for purposes of applying for the exemption, but if the husband did not act, the wife could apply. The amended definition of "head of family" where a married couple is involved follows: "70-32-102...The phrase "head of a family" as used in this chapter includes within its meaning: (1) the husband and wife acting together or either one of them if they do not join in the particular transaction. In any given transaction which requires action by the head of family, the spouse who undertakes the transaction shall be deemed head of the family in regard to that particular transaction..." This change allows either spouse to take the initiative and apply for a homestead exemption.

The "head of family" definition covers other family groups besides husband and wife—those where dependents exist. The former subsection included as dependents unmarried adult sisters or other relatives mentioned earlier in the section who were unable to take care of themselves. A minor amendment specifically included "brother" as well as "sister".

70-32-103. The homestead formerly was to be chosen from the husband's property, or from the wife's only with her consent. Now it may be selected from the property of either.

70-32-105. In accord with the revised definition of "head of family", the section stating how to apply for an exemption now refers only to the head of the family and not to the husband. In effect, either spouse or both jointly may now apply. Under former law the husband alone, or the wife only if the husband failed to act, could apply for the exemption.

70-32-106. In the same vein, the homestead declaration now includes a statement that it is being made by the "head of a family", and that both spouses join in the declaration, if that is the case. Previously, the husband had to sign, or if the signor was the wife, she had to state that her husband had not acted.

70-32-213. The homestead property may be sold to satisfy debts under certain circumstances, but only the proceeds in excess of the value of the exemption go to satisfy the debt. This section protected the money from the sale (equal to the value of the exemption), going to the person claiming the exemption, from legal process for six months, and from being spent by the husband. The amended section now protects the money from being spent by either spouse during the six-month period.

33-103, RCM 1947. This section, which prohibited choosing the homestead from the wife's property without her consent, was repealed.

Practically, these changes may not make much difference, but they recognize the legal equality of husband and wife.

VIII. Marriage, Divorce and the Family

A. MARRIAGE AND DIVORCE [Sections 40-1-101 through 40-1-404 and 40-4-101 through 40-4-220]

In 1975, the Uniform Marriage and Divorce Act (Senate Bill 5) was adopted in order to improve on prior law and eliminate some of the differences in marriage and divorce statutes that exist between states. The new law is conspicuously free of references to the sex of the parties. It covers two major areas, to be treated separately here—solemnization and registration of marriage and the rules governing its dissolution.

(1) **Marriage** [40-1-101 through 40-1-404]

The changes here are not nearly as profound as those in the section of the act dealing with dissolution of marriage, and most may not be of particular interest to women. The major differences from prior law are as follows:

(a) **Minors:** (i) Prior law set no minimum age for marriage, so long as the minor had parental consent and judicial approval of the union. The Uniform Act will not validate the marriage of any child under sixteen years of age. [40-1-202]

(ii) Both former and present law required parental consent to and judicial approval of a marriage involving a minor (16 or 17 years old). Judicial approval was possible only if the judge determined the marriage to be in the "best interest" of the minor. Of particular interest to women is the fact that the law establishes the policy that if the minor is **pregnant**, that fact alone will not automatically mean that marriage is in her best interest. [40-1-213(2)] The Uniform Act, in addition, explicitly authorizes the judge to require marriage counseling before granting a marriage license and, after amendment in 1979, the Act mandates such counselling, including, at a minimum, two separate sessions not less than

10 days apart. Fees are not to be charged, the district courts having the responsibility to draw upon counselling resources in the community for the purpose. [40-1-213(1)]

(b) **Who may solemnize a marriage** [40-1-301]

(i) Public officers: Senate Bill 5 authorized district and supreme court judges and any other public officials whose powers included performing marriages to solemnize them. Apparently through oversight, justices of the peace were not included in the new listing of those who could perform marriage ceremonies, a matter upsetting to many of them. The oversight was corrected by the 1977 legislature, which went a step further and added mayors to the privileged list as well. Also, in 1979, tribal judges were added to the list. [40-1-301(1)]

(ii) Tribal custom: The old law recognized marriage by "religious societies". Whether that would include traditional Indian marriage ceremonies was subject to interpretation. The Uniform Act specifically grants state recognition to any "mode of solemnization recognized by any religious denomination, **Indian nation or tribe, or native group."** (emphasis added) [40-1-301(1)]

(c) **Prohibited marriages** [40-1-401]

(i) Mentally retarded: the old statute prohibited marriages by mentally retarded individuals, but the new law allows them.

(ii) Bigamy: Bigamy is also prohibited (as it was under former law) but if the former marriage is dissolved or the prior spouse dies while the bigamous couple are still living together, the latter are considered to be lawfully married from the date the "impediment" is removed. The old law explicitly dealt with the situation where one spouse disappeared without explanation or was believed dead—if a person believed that the missing spouse was dead, or if the deserted spouse waited five years, remarriage was lawful. No such provision is included in the Uniform Act, making it difficult for a person with a missing spouse to remarry.

(iii) Others: Marriage between ancestors and descendants, brothers and sisters, first cousins, aunts and nephews, uncles and nieces was prohibited by both the old law and the Uniform Act.

(d) **Annulment** [40-1-402]. Grounds for invalidating a marriage are generally the same in both old and new laws: fraud, force, physical incapacity to consumate the marriage, being of unsound mind, marriage involving minors without parental consent, bigamy, marriages between

close relatives. The Uniform Act specifically includes mental incapacity because of the influence of alcohol, drugs, etc. It also prohibits absolutely, which the old law did not, marriages involving minors under sixteen years of age.

There is one major difference between the old and new laws in regard to invalidation of marriages. The old law, in the cases of marriages involving people of unsound mind, fraud, or force, considered the unions validated where the parties continued living together after (in the first case) the party regained his or her reason, the facts of the fraud were out in the open, or the element of force was removed. Cohabitation no longer will validate a marriage, if they want to, within a certain period of time. If they do not, the validity of the marriage can no longer be challenged.

In the case of marriages involving children under sixteen, or sixteen or seventeen-year-old minors who do not have parental consent, the marriage may be challenged by the underaged party, the parent or guardian only until the minor reaches eighteen. After that, the marriage no longer can be invalidated. Under prior law, if the couple was not living together when the underaged party or parties reached eighteen, the latter had two years thereafter within which to bring the action. That right no longer exists.

The time limits on invalidation actions are as follows:

(i) mental incapacity—one year after one spouse discovers the incapacity of the other;

(ii) force, duress, or fraud—two years after receiving knowledge of the described condition;

(iii) lack of physical capacity—two years after finding out;

(iv) bigamy or marriages between close relatives—until one of the parties dies. Such an action may be brought by either party to the marriage, the county attorney, a child of either party, or, in the case of bigamy, the legal spouse.

Any party to an illegal marriage who believes that he or she is in fact legally married (a "putative spouse") has all the rights of a legally married person until he or she finds out about the illegality, including, after the discovery, the right ot be maintained by the other spouse. [40-1-404]

Children of invalid marriages are considered legitimate. [40-1-402(4)]

(e) **Common-law marriage.** Such marriages are still recognized by law. [40-1-403] However, as under the old law, certain requirements must be met before common law marriages are legally valid. The couple must represent themselves in public to be married and there must be consent of both parties, both competent to enter into marriage. They must also have established a specific time from which moment on they considered themselves and held themselves out to be married. Co-habitation alone is not sufficient proof of common law marriage.

(f) **Foreign marriages.** Former law granted state courts the right to refuse to recognize a marriage contracted in another state or country if such recognition were contrary to strong state public policy. Presumably, unions such as polygamous marriages were being contemplated. The Uniform Act contains no such power to invalidate a foreign marriage on public policy grounds, but, on the contrary, recognizes any foreign marriages that were valid in the place where they were contracted. [40-1-104]

(2) **Separation and Divorce.** [40-1-105 and 40-4-101 through 40-4-220] This portion of the Uniform Act removes the necessity for labelling one party or the other as "guilty" or more responsible than the other for the breakdown of their marriage. Insofar as divorce and separation are concerned, the goal of the Act, once a marriage is determined to have irreversibly broken down, is to negotiate a settlement with a minimum of bitterness and recrimination.

Some of the old automatic preferences that wives used to have by law are no longer there. Instead, a judge is bound to make a settlement as fair to both parties as possible, taking into consideration many different factors, naturally varying from case to case, such as education, ability to make a living on one's own, whether one party will have charge of young children, etc. In other words, while wives will not be automatically assured of preference in the final settlement, a woman who has worked in the home all her life, has no other training and no prospect of a job, or who may have young children at home whom it would be difficult to leave in order to work, is still protected by the standards set by the new law.

The major additions and changes are as follows:

(a) **Grounds for divorce.** There used to be eight grounds for which a divorce or separation might be granted—incurable insanity, adultery, extreme cruelty, desertion, neglect, habitual intemperance, conviction of a felony, and irreconcilable differences. As of January 1, 1976, there is only one reason for dissolution of a marriage—a finding by the court that

the marriage is "irretrievably broken", meaning there is no reasonable prospect of reconciliation.

The change also eliminated some provisions which discriminated against both men and women. One was already mentioned in Chapter VI, Head of Household—it was desertion for a woman not to conform to the place or mode of living her husband chose, unless his choice was "unreasonable and grossly unfit." Willful neglect could be committed only by a husband, not a wife; it consisted of failure by a man to provide his wife with the necessities of life, if he had the ability to do so. Extreme cruelty included repeated public and false charges by a husband that his wife was unchaste; such charges by a wife, on the other hand, were not grounds for divorce.

The use of most of the old grounds for divorce naturally required one party to be labelled as principally responsible for the divorce, brought marital wounds out in public, and aggravated whatever bitterness already existed. "Irreconcilable differences" was added in 1973 as an independent ground for divorce or separation and was the first step toward the policy expressed in the Uniform Act. It did not require the labelling of one party as the villain, only that both parties had differences which were unsolvable and which caused the marriage to irretrievably break down.

One of the goals of the Uniform Act was to mitigate the potential harm to family members when a marriage went through legal dissolution, the result being that the only ground for divorce or separation which was retained was irretrievable marital breakdown caused by irreconcilable differences. In the same spirit, a divorce is not awarded to **one** of the parties (much as laurels to the "victor") but to both. The decree states that it affects the status previously existing between the two parties, husband and wife.

(b) **Defenses against an action for divorce or legal separation.** Prior law prohibited the granting of divorces if (i) one spouse consented to and cooperated in acts by the other that would normally be grounds for divorce (" connivance"); (ii) a couple worked together, in order to get a divorce, to make it seem as if grounds existed ("collusion"); (iii) one spouse forgave the other for doing something that would be a ground for divorce ("condonation"); or (iv) the defending spouse could show that he or she had cause for a divorce action against the complaining spouse ("recrimination"). All of these defenses are now eliminated. [40-4-105]

(c) **Residence requirements.** Previously, the complaining spouse

had to live in Montana for at least one year prior to beginning the action for divorce. Now, one or the other of the parties must be a resident at the time of filing for divorce and, by the time the judge makes his or her decision whether to grant the divorce, must have been a resident at least **ninety (90) days.** [40-4-104]

(d) **Requirements for granting decree of dissolution or legal separation.** The judge must find that:

(i) the residency requirement is met [see (c) above];

(ii) the marriage, according to the evidence, is irretrievably broken; (Note: prior law required irreconcilable differences to exist at least six months before the petition was filed; no such time requirement now exists. However, no decree may be finalized until twenty (20) days after service to both parties.)

(iii) the parties had been living separately for at least 180 days before the divorce petition was filed, or serious marital discord adversely affects the attitude of at least one of the parties toward the marriage;

(iv) conciliation measures, requested by the parties or required by the court, have failed to resolve the problems causing the marital breakdown. (Provisions of the Montana Conciliation Law [40-3-101 through 40-3-127] remain in effect under the new law. These sections provide for counselling when the judge feels a reconciliation is reasonably likely.)

(v) child support, custody, disposition of property and maintenance of either spouse have been provided for, or set for separate hearing. [40-4-104]

(e) **Separation agreement made by husband and wife.** In accord with the policy of the Act—to promote amicable settlements—husband and wife are allowed to make their own written settlement regarding property and maintenance of either spouse. A judge must approve the agreement, but must accept all the terms—with the exception of those regarding the children—unless he or she finds them unconscionable.

The terms of such an agreement will be included in the final decree unless the agreement itself specifically says the contrary—in which case the final decree will only refer to its existence and the fact the judge found it acceptable. If the terms of the agreement are included in the decree, they are enforceable just as a contract is, and as any judgment is, including citation for contempt if its terms are not followed. [40-4-201]

(f) **Disposition of property.** The Act sets out a number of factors the court is to take into consideration when dividing up the property of both parties: how long they have been married, whether either had been married before, whether they had a premarital agreement covering the situation, their ages, health, social status, occupations, income, skills, employability, liabilities, needs, custody provisions for children, whether one spouse will also receive maintenance, and future opportunities for income and property. In addition, the court is directed explicitly to take into account the non-monetary contribution of a spouse as a homemaker or to the family unit, and the extent that contribution has helped maintain the property being divided. [40-4-202]

(g) **Alimony.** Alimony technically no longer exists, nor is "maintenance", the support required of one spouse for the other, to be almost automatically granted a wife, as was usually the case under prior law. Women actually benefit by the elimination of alimony in one respect—Montana case law prohibited alimony where the divorce was granted because of an offense of the wife. The existence of guilt on the part of the wife is no longer a factor in determining whether she is to receive maintenance.

The Act carefully specifies standards to be used in determining whether to grant maintenance, which should protect women who have spent their lives running a home and caring for a family, and who may have no marketable skills. The judge is to consider:

(i) whether the spouse asking maintenance has enough property to provide for necessities;

(ii) whether the requesting spouse is able to be self supporting through employment, or is caring for children under circumstances making staying at home advisable;

(iii) the customary standard of living of the couple;

(iv) the ability of the spouse who would pay for maintenance to survive while meeting the other spouse's needs. [40-4-203]

(h) **Child support.** Either or both parents may be requested to pay child support, considering the needs of the parents and the child, and the resources available to each spouse. The decision will be **without regard to either the sex or the misconduct of each spouse during marriage.** [40-4-204] The court may appoint an attorney to represent the child. [40-4-205]

(i) **Wage assignments.** The court may order a person obligated to

pay support or maintenance to assign part of his or her wages to the person to whom it is due. It is worth noting that an employer is barred, under the Act, from firing or otherwise disciplining an employee who has to make such an assignment, a needed protection for employees. [40-4-207]

(j) **Effect of decree.** An appeal is possible from the final decree, but if it is not based on a challenge to the finding that the marriage is irretrievably broken, either party may remarry before resolution of the appeal.

If the decree is of legal separation, rather than divorce, the parties, after waiting six months, may thereafter move the court to convert the decree to one of dissolution of marriage. [40-4-108]

(k) **Restoration of wife's birth name.** Until 1977, if a marriage was dissolved or declared invalid, the same court could grant the wife legal restoration to her former name, and had to do so, upon request, if there were no children. The implication was that if children existed, the judge could refuse to grant such a name change. However, the state of the law seemed to indicate that a woman had a common-law right in Montana to change her name informally and that a judge should not deny her the right to do it officially. Perhaps in recognition of that position, this section was amended in 1977 to eliminate the reference to children, making it mandatory that the judge restore the wife's former name if she so requests. [40-4-108]

(l) **Child custody.** The factors the court must consider when determining which parent will have custody of the children are laid out carefully in the Uniform Act, while they were not under prior law. In addition, judges habitually awarded young children to their mothers, a practice which was endorsed by Montana case law. Neither mother nor father are favored under the Uniform Act. The factors to be considered include:

(i) the wishes of the parents;

(ii) the wishes of the child;

(iii) the child's relationship with all the people close to it;

(iv) the child's adjustment to home, school and community;

(v) the mental and physical health of everyone involved. [40-4-212 and 40-4-214]

In 1979, the legislature made it possible, during a custody proceeding, for temporary custody to be given to one of the opposing parties before the other has an opportunity for hearing, if the following standards were met:

(i) it would be in the child's best interest under the five factors listed above, and there is no previous grant of custody by a court; or

(ii) a previous determination of custody has been made, but the child's present environment endangers his physical or emotional health, which a change in custody would protect.

If such a one-sided temporary assignment of custody is made, a hearing will be held within 20 days thereafter to give the other party a chance to contest it. [40-4-212 through 40-4-214; and 40-4-220]

If the custodial parent dies, custody automatically passes to the non-custodial parent unless one of the following requests a custody hearing: the non-custodial parent, the surviving spouse of the deceased custodial parent, someone nominated in the deceased parent's will, anyone with actual physical control over the child, or anyone who can show good cause to be allowed to intervene as an interested party. The custody decision will be made using the same factors listed above. [40-4-221, added in 1979]

(m) **Visitation and custodial rights.** The Uniform Act expressly grants the right of the parent without custody to reasonable visits with his or her children, unless the court finds, after a hearing, that visitation would be harmful to the child's physical, mental, moral or emotional health. In 1979, the legislature gave grandparents the right to petition for and be granted reasonable visitation rights as well, so long as the court finds that would be in the best interest of the child. [40-4-217] The custodian, on the other hand, has the right to determine the child's education, health care, religious training, etc., unless the parents have agreed otherwise in writing (and unless the non-custodial parent complains and the court finds the child's physical or emotional health is endangered). [40-4-217 and 40-4-218]

(n) **Violation of custody rights.** One of the most devastating problems associated with divorce is that of the parent who takes his or her child from the one who has custody and disappears. The legal remedies available to a parent who loses a child in that manner have been limited even if the parent finally locates the child. The Uniform Child Custody Jurisdiction Act was designed to mitigate against abductions of children by their non-custodial parents, as discussed on

page 52, and the criminal law contains a provision banning "custodial interference" by anyone, including a parent. (The penalty may be up to 10 years in the state prison.) Until 1979, the violator could protect himself or herself from conviction by returning the child voluntarily prior to trial. As of 1979, the loophole is narrowed. To avoid committing an offense, the child stealer must return the child voluntarily prior to arraignment proceedings if he has not left the state, or if he has already done so, he must return the child prior to his or her arrest. [45-5-304]

(o) **Procedure if parties are too poor to pay costs or attorney's fees.** A woman who was unable to afford the court costs of bringing suit for divorce was assured by prior law that the court would allow her to sue without paying those costs. Similar provision was not made for men. Husbands were generally expected to pay for their wives' costs if their wives brought suit, but had little money of their own. In addition, if the husband wanted to bring an action for divorce, but was too poor to pay for his wife's side of the case (plus alimony) as well as his own, the courts sometimes felt that he should not bring an action at all. The Uniform Act does not grant a preference to either husband or wife as far as costs are concerned. Court costs can be waived under other statutory provisions if the party is too poor to pay them, and the Act allows the court, after examination of each spouse's respective resources, to order the one with money to pay a "reasonable" part of the costs and attorney's fees of the spouse with few resources. [40-4-110]

(p) **Modification of maintenance, support, property disposition, and custody decrees.** Generally, the new Act makes modification of provisions of the decree, especially custody, more difficult than under previous law. The intent is to prevent unnecessary harrassment of the parties after the judge's final decision. [40-4-208 and 40-4-219]

In 1979, a move in the opposite direction was made in regard to custody decrees. Its effect is to allow changes in custody to be made during the two years after the date of the decree if the one having custody agrees to the change or the child has been living with the family of the one petitioning for a change with the consent of the one with legal custody. The original language of the statute prohibited change of custody on such grounds unless two years had passed since the custody decree was issued. The court still must find that the request for a change is a result of altered circumstances of the child or the custodian, based on facts unknown to the judge at the time the decree was entered, or facts arising since then, and that the switch is in the best interest of the child. [40-4-208 and 40-4-219]

The same legislature also made it clear that the custody order could

be modified upon the death of the custodial parent, as discussed in paragraph (1) above. [40-4-219]

As far as modification of maintenance and support decrees are concerned, however, the 1979 legislature continued to follow the original principle of making modification more difficult. Divorce decrees which do not initially contain provisions for maintenance and support may now be modified to provide them only within the two years following the date of the decree. [40-4-208]

(q) **Failure to support as bar to subsequent marriage.** From 1963 until 1979, the law prohibited issuing a marriage license to anyone who was under court order to support dependents and failed to do so, unless a court also found the individual was capable of supporting existing and potential dependents, in which case that person might have to provide the court with enough money or property as security to ensure he or she would meet existing obligations. The 1979 legislature repealed the above restriction on marriage. [40-1-211]

This explanation does not cover every aspect of the Uniform Act, but only the major parts most likely of interest to the readers of this booklet. Nor is it intended to be a self-help manual for those desiring a divorce or separation. A person wanting to bring such an action should ask a lawyer's advice.

B. MARITAL RELATIONS— SUPPORT, CONTROL OF PROPERTY, ETC.

[Sections 7-4-2613, 7-4-2619, 32-1-107, 40-2-102 through 40-2-104, 40-2-107, 40-2-108, 40-2-302, and 40-2-201 through 40-2-210]

Senate Bill 4 made several changes in present statutes to make them apply to both husbands and wives, not one or the other as was usually the case. Many of the statutes were simply granting to wives the rights husbands already had, so the equalization of application in fact made little or no difference in practical application. Other amendments were more substantive. The changes are as follows:

(1) **Protection of individual property during marriage.**

40-2-202 Individual property of married person.
40-2-203 Inventory of individual personal property of married person.

40-2-204 Effect of filing inventory.
40-2-205 Earnings and accumulations of married persons.
40-2-206 Same as above, in case of separation.
40-2-207 Work and labor of married person.
40-2-208 Debts of spouse contracted before marriage.
40-2-209 Individual property of married person—how far liable.

The above statutes as a group used to apply to married women only, but now apply to any married person. The intent of those statutes is to provide protection to the individual property and income of each spouse from the debts of the other. To prevent there being question about whose property is whose, the statutes allow an inventory of separate property to be filed with the county clerk. No married person's separate property, income or other fruits of his or her labor can be drawn upon to pay the debts of the spouse unless the debt was incurred to provide **necessary** articles for either spouse or their children, or unless creditors had reason to believe the separate property belonged to the spouse incurring the debt, it being in his or her sole possession. (The original section 36-118, RCM 1947, now 40-2-209, protected a wife's property from any debts of the husband unless the debt was incurred to provide necessary articles for the wife and children—not the husband. The amendment extended liability to purchases of necessary articles for any member of the family.)

40-2-210. What are "necessary articles"? New sec. 40-2-210 defines "necessary articles" to include goods and services reasonably required to provide for the health, welfare, comfort and education of any spouse or minor child, taking the family's standard of living into consideration.

(2) **Support.**

40-2-102. Duty to support. Formerly, a husband had the primary duty to support himself and his wife, his wife being obligated to help only if he was unable to carry the whole burden. Now, each is responsible to support the other. The non-monetary support of a homemaker is explicitly included in the definition of "support".

40-2-103. Support of spouse, and **40-2-104. Married person not liable when abandoned by spouse.** The above statutes used to require a husband to support his wife as well as he was able, made him liable to persons who in good faith provided her with necessary help if he failed to do so, and exempted him from the duty only if his wife deserted him unjustifiably or was separated from him by an agreement which did not include support. The statutes now make the obligation run to either

spouse. Sec. 36-121, RCM 1947, which required a wife to support her husband when he had no separate property and was physically unable to support himself, no longer is needed, of course, and was repealed.

(3) **Miscellaneous.**

7-4-2613. What must be recorded by county clerk. Once again, as mentioned previously, instruments regarding individual property of married persons (rather than women) must be recorded upon request.

7-4-2619. Indexes a county clerk must keep. In accord with 7-4-2613, the clerk must keep an index of the individual property of married "persons".

32-1-107. Purposes for which trust company may be formed. In accord with the statutory changes mentioned above, a trust company may now handle trusts for the individual property of married persons (not just women).

40-2-108. Married person may act as personal representative, guardian, conservator or trustee. This statute once raised married women to equal status with men and now covers either men or women. The practical effect is minimal.

40-2-201. Exclusion of one spouse from other's dwelling. Until 1979, state law prohibited one spouse from being barred from the other's home. It was amended by the 1979 legislature to allow such an exclusion if ordered by a court.

40-2-302. Married person liable for own contracts. Contracts made by a married person regarding individual property, labor and services bind only that person, not his or her spouse. Formerly, the statute applied to married women only.

36-110, RCM 1947. Right to prosecute actions, and **40-2-107. Married persons may sue and be sued.** The original statutes gave wives the right to prosecute or defend legal actions, a right already possessed by husbands. Feminine nouns and pronouns were neutralized, so that the statute applied to married "persons". The two sections effectively duplicate each other. Since only one is needed, Sec. 36-110 was repealed entirely in 1977.

36-130, RCM 1947. Married person may make contracts as if single. The change was one of gender, from "woman" to "person". In

1977, this section was repealed as unnecessary, since Sec. 40-2-302 also gives married people the right to make contracts.

C. PARENT-CHILD RELATIONSHIP [40-6-101 through 40-6-131, 40-6-201, 40-6-202, 40-6-211, 40-6-217, 40-6-221, 40-8-111]

The Uniform Parentage Act (House Bill 10) supplements present law dealing with the parent-child relationship and alters some old prejudices built into preexisting law. References to legitimacy and illegitimacy were largely eliminated, as were some of the statutes designed to determine when a child was one or the other. The emphasis, instead, is on establishing who the parents of a child are, in order that they assume their responsibilities toward it. (For example, sec. 61-103, RCM 1947, allowing the legitimacy of a child to be challenged, was repealed entirely. The new law allows presumptions about who are the real parents to be challenged in court, a change in emphasis, primarily.) The procedures and standards created to determine the parent-child relationship are far more extensive and specific than those existing under prior law, and are intended to apply to either the mother or father equally, as far as possible. The only pre-existing law for determining parentage was in a chapter entitled "Support of Children Born Out of Wedlock", [93-2901-1 through 93-2901-11, RCM 1947] and was repealed entirely in 1975.

The most important provisions of the Uniform Parentage Act (referred to hereafter as the UPA), as well as notable changes from prior law, are noted below:

(a) **Definition of "parent-child relationship."** The parent-child relationship, in this context, means the relationship defined by law—including rights, privileges, duties and obligations of both children and parents—between a mother and child and a father and child. The same legal relationship exists between every parent and child, regardless of the marital status of the parents, and includes adoptive parents. [40-6-102 and 40-6-103]

(b) **How to decide who is a natural parent.** Natural mothers, of course, have an easier time proving their maternity than fathers their paternity. The natural mother may prove that fact with evidence of having given birth—or if, for some reason, that is not available, by following the same procedure provided by the UPA for establishing paternity, as far as possible. (The procedure for establishing the parent-child relationship is described below).

The new law sets out certain actions on the part of men toward children which will raise the presumption that they are in fact the natural fathers of those children. If the man in question, or someone else, wants to defeat a presumption, weightier evidence proving he is not the father must be produced, in court.

A man is presumed to be the natural father of a child if one of the following occurs:

(i) The child is born while he and the natural mother are married; (Sec. 40-6-201, an old but unrepealed statute, does roughly the same thing by stating that children born in wedlock are presumed to be legitimate.)

(ii) The child is born within 300 days after the marriage between the man and the natural mother ends, due to death, annulment, declaration of invalidity, or divorce or separation; (Sec. 40-6-202, also old and unrepealed, presumes that children born within 10 months of the dissolution of a marriage are legitimate.)

(iii) The man and the natural mother married before the child's birth, but the marriage could be declared invalid, and the child is born during the attempted marriage or within 300 days after its termination;

(iv) The child was born **before** the marriage but the marriage could be declared invalid, and the man has either acknowledged paternity in writing (filed with the court or the Department of Health and Environmental Sciences) or is named on the birth certificate with his consent, or is obligated to support the child by court order or a written voluntary promise;

(v) The man accepts the child into his home while it is a minor, and acts publicly as if the child is his natural child;

(vi) The man has filed a notice of intent to claim paternity of the unborn child with a district court or has acknowledged paternity in writing, filed with a court or with the Department of Health and Environmental Sciences, and the mother, after being notified, does not dispute if. [40-6-105 and 40-6-126]

(c) **Court procedure for determining who is a parent.** The procedure may be used to determine either motherhood or fatherhood, and either a man or woman may bring the action. (The old, repealed, "bastardy" proceedings could only be brought by the child's mother.) If a presumption exists concerning who is the natural parent, any

interested party can bring an action to establish the parent's existence legally. If no presumption exists, the following parties can bring an action—the child, its parent or representative, any person alleging to be the parent or his or her representative if the alleged parent has died or is a minor. [40-6-107]

The father or mother may **not** represent their child in these proceedings. A guardian will be appointed if one does not already exist. [40-6-110]

Formal trial is a last resort under the UPA. The judge will try to settle the whole affair at an informal hearing beforehand, after demanding and listening to all relevant evidence, including blood tests. If a witness refuses to answer because he or she might thereby be subject to criminal charges, the judge can grant immunity from prosecution for such liability and may thereafter compel the witness to testify. None of these proceedings will be public. [40-6-111 and 40-6-112]

The judge will make a recommendation for a settlement at the end of the pre-trial hearing, including the following, as alternatives:

(i) that the action be dismissed;

(ii) that the alleged parent agree to a specified financial obligation toward the child without admitting to a parent-child relationship. In this case, the judge would carefully consider the odds on proving that relationship at trial. He or she may also order the parent's identity kept confidential in the best interests of the child;

(iii) that the alleged parent acknowledge the parent-child relationship voluntarily.

If the alleged parent agrees to the recommendation, judgment will be entered in accord with it, and the action will be completed—unless the guardian for the child refuses to join in the recommendation. If there is no agreement, the issue will go to trial [40-6-114].

At trial, both the known parent and the alleged parent may be compelled to testify. Of interest to women, no evidence can be admitted about an unidentified man's sexual access to the mother, or access by an identified man at a time other than the probable time of conception, unless it is offered by the mother herself. This is probably because such evidence is of questionable value in proving or disproving paternity, and its major impact is to sully the reputation of the mother.

If an alleged father has evidence about the sexual relations of the mother with a man who is beyond the jurisdiction of Montana courts, he can introduce it only if he himself has undergone a blood test showing he may possibly be the child's father. Any man who is identified as above, and **is** subject to the jurisdiction of the court will be added as a defendent in the action. [40-6-115] (It should be noted that the UPA declares Montana courts have personal jurisdiction over any man who has sexual relations within this state which produce a child. [40-6-109])

(d) **Judgment.** Under the old law, a judgment naming a man as father had to order child support. The new standards do not require such payments, though they normally would be ordered.

A judgment will normally cover the following areas as well: custody and guardianship of the child, visitation privileges, payment of reasonable expenses of mother's pregnancy and confinement, furnishing of bond or other security for payment of judgment, etc. The standards the judge should use to determine the proper amount of support payments are also carefully set out in the law. [40-6-116]

(e) **Right to counsel—indigency.** At the pre-trial hearing and thereafter, any party has a right to counsel. If he or she cannot afford a lawyer, one will be appointed at county expense. If the judgment is appealed, an indigent party has a right to a free transcript of the proceedings to use for the appeal. [40-6-119] (The old law allowed no provisions for a court-appointed attorney.)

(f) **Confidentiality of proceedings.** The pre-trial hearing and trial, if any, are closed to the public, and all the papers and records relating to the action—with the exception of the final judgment—will be sealed. They will be subject to public inspection only if there is good reason to do so, or if all the interested parties and the court agree to open them. [40-6-120]

(g) **Times within which actions must be brought.** (i) An action may be brought at any time to prove the parent-child relationship of a man presumed to be the father according to presumption (i), (ii), (iii), and (iv) of paragraph (a) above.

(ii) An action to **dis**prove the parent-child relationship of a man presumed to be the father (under the same circumstances as in subparagraph (i) above) must be brought a reasonable time after discovering the relevant facts, but never after the child reaches five years of age.

(iii) If there is no presumed father, an action to prove or disprove a relationship must be brought before the child is three years old. (Note: Claims to a portion of someone's estate, including those by children, have to be made within certain time limits. If parentage is not determined within those time limits, the child in question loses any potential right to share in the estate.) [40-6-108]

Prior law required any action to determine parentage to be brought within two years after birth of the child.

(h) **Adoption—father's rights.** The new law gives fathers of illegitimate children the right to participate in adoption proceedings, a right they did not have under prior law. Section 40-8-111, before it was amended in 1975, required only the consent of the mother to adoption, if the child was illegitimate. The amended section requires the approval of both parents, unless the following conditions exist in regard to one of them:

(i) the parent has been found guilty of child battering by a court;

(ii) a court denied the parent custody because of cruelty or neglect toward the child;

(iii) the parent has willfully abandoned the child;

(iv) the parent has caused a state or private agency to maintain the child for at least a year without contributing to its support, if able;

(v) the parent has not contributed to the child's support for the year before the filing of the adoption petition, even though he or she is able to;

(vi) the parent's rights to the child have been judicially terminated. [added in 1979]

[A provision eliminating the need for a parent's approval if a court has found him or her to be a habitual drunkard was deleted in 1979.]

In 1977, the legislature added provisions intended to expedite adoption proceedings while still protecting the rights of both parents. New section 40-6-124 allows a parent to give up his or her child for adoption by executing a written release. Once the release is filed with the district court, the court will issue an order terminating the rights of that parent to the child. A child may not be placed for adoption until the rights of both parents, the surviving parent, or the guardian—whichever is relevant—

are terminated. Once the child is in fact placed for adoption, the release may not be revoked, though revocation is possible up until that point.

If the mother wants to release the child for adoption and the father's consent cannot be obtained (as, for example, when he cannot be found), his rights must be terminated by a court before adoption may occur. [40-6-125, enacted in 1977]

Fathers of children born out of wedlock may now help protect their rights to their child by filing a notice of intent to claim paternity with any state district court. The notice itself is a simple form which may be filled out without the assistance of a lawyer. Such notice ensures that a father will receive notice of any hearing to terminate his rights to the child so that it can be released for adoption. [40-6-126, enacted in 1977]

New section 40-6-127 (1977) allows a petition by a mother to the court at least 30 days prior to the expected date of birth of a child born out of wedlock, giving notice that she intends to release her baby for adoption. That notice is to be sent to the father of the child, if the mother provides his address, pointing out his right to file a notice of intent to claim paternity to protect his own rights to the child. If the father receives such a notice of the mother's intent to release her baby for adoption, he **must** file a notice of intent to claim paternity before the birth or expected date of birth of the child, or he will have lost his right to receive notice of any hearing to determine the father's identity legally or to terminate the father's right to custody. Such a failure will also amount to a denial of his claim to custody, resulting in the termination of his rights by the court.

After the birth of the child, the court will hold a hearing to determine who is the father and whether he will be granted custody or have his parental rights terminated. Notice of the hearing will go to any man who either filed a notice of intent to claim paternity or may be the father but was not served with the mother's notice of intent to release the child for adoption at least 30 days prior to the birth (in other words, he was not given adequate time to file a notice of intent to claim paternity). The latter information, of course, is usually obtained through careful questioning of the mother, including the following:

(1) Was she married when the baby was conceived or thereafter?

(2) Was she living with a man at the time of conception or birth?

(3) Did she receive support or promises of support from anyone regarding her pregnancy or the child?

(4) Has anyone informally or formally claimed to be the father?

It should be noted that, in recognition of the mother's right to privacy, a mother may not be forced to reveal the identity of the father of her child. [40-6-128, enacted in 1977]

Under former section 61-325, RCM 1947, repealed in 1977, if no father were named, the court could post notice of adoption proceedings publicly in hopes the natural father would see it. There was an obvious conflict between such notice and the privacy rights of mother and child, since adequate notice would naturally have to provide information identifying the mother. Such public notice is still possible if the court thinks it will help to inform the father, but the law now explicitly allows the mother's name to be used **only** if she gives her written consent. [40-6-128, enacted in 1977]

A father's rights may be terminated if any of the following occur:

(1) He acknowledges paternity and denies his interest in custody;

(2) He files a denial of paternity;

(3) He receives timely notice of the mother's intent to release the child for adoption, but fails to file his intent to claim paternity before the expected date of birth in the notice or the actual date of birth;

(4) He receives notice of hearing, but fails to appear, or appears and denies his interest in custody.

If the father cannot be found, or his identity cannot be determined, his rights may be terminated if a reasonable attempt to find him as been made and if any of the following circumstances exist:

(1) An unknown father has made no attempt to care either for the mother during pregnancy or hospitalization, or for the child;

(2) A father whose name is known but whose whereabouts are unknown has made no attempt to support the mother or has shown no interest in the child nor provided for its care for at least 90 days preceding the hearing.

Unless appealed, the decision of the court terminating parental rights cannot be contested for **any reason** once six months have passed after the date of the order. [40-6-129, enacted in 1977]

The father may obtain custody if he appears at the hearing and is found to be a fit father and able to care for the child, after questioning by the judge. If the father failed to provide for the mother while she was pregnant or for the child after it was born, it will hurt his chances of receiving custody. His capacity as a father will be balanced against the benefits the child may receive by being placed for adoption. If he wins custody, his child is to be considered legitimate, under the law. [40-6-130, enacted in 1977]

(i) **Custody rights of parents.** Section 61-108, RCM 1947, which gave the mother of an illegitimate child sole right to its custody, services and earnings, was repealed in 1975. Now, both parents have an equal right to custody, regardless of the child's legitimacy. [40-6-221]

(j) **Parental duty to support a child.** (i) Old section 40-6-211 did not place equal support obligations on both parents, which amended section 40-6-211 does. Previously, if a child was legitimate, the mother had to assist in supporting the child only if the father's resources were inadequate. Now, the reference to legitimacy is entirely eliminated, and both parents share the support responsibility.

(ii) Old section 40-6-217 relieved a husband of the duty to support his wife's children by a former marriage, unless he voluntarily accepted them into his home. Now, after the 1975 amendment, the rule applies to either husband or wife equally. (Note: both the above amendments were made by Senate Bill 4).

(k) **Grandparent's visitation rights.** The 1979 legislature gave the father or mother of a deceased parent of an unmarried child the right to petition a court for reasonable visitation rights with their grandchild, so long as the visits would be in the child's best interest. The right to petition or whatever visitation rights they may already have are terminated once a grandchild is adopted by someone other than a stepparent or grandparent. [40-9-101 and 40-9-102]

D. UNIFORM CHILD CUSTODY JURISDICTION ACT [Sections 40-7-101 through 40-7-125]

The above act was adopted in 1977 primarily to prevent conflicts in custody matters with the courts of those states which adopt the same act, to deter abductions and generally facilitate cooperation between the courts of different states in custody matters for the well-being of the children involved.

The major provisions are as follows:

(a) If a custody proceeding is taking place in another state with a law substantially the same as this act, Montana's state courts will not hold a hearing at the same time, unless the other court decides Montana is a better place for the hearing;

(b) The courts of all states adopting the act will attempt to determine if parallel custody proceedings may have taken place, are taking place or may be taking place in the future, and, if so, will mutually determine which state is the best forum;

(c) If an individual petitioning for custody has misbehaved in some way, such as by abducting the child, the court may decline to hear the case. Such an individual may be required to pay the attorney's fees and other expenses of opposing parties who had to respond to the petition.

(d) The court may send notice of a custody proceeding to a party in another state, and if they fail to appear, the decision may go against them. Travel and other expenses of such a party may be paid by another party, if the court decides that is fair, a provision of particular importance to women, since, as a general rule, more mothers than fathers spend their time as homemakers with limited or non-existent independent income.

(e) Montana's courts will not modify the custody decree of a court of another state with substantially the same law unless the other court no

longer has jurisdiction (for instance, no party lives there any more), has declined to assume jurisdiction, or unless the best interest of the child is overriding.

E. HOMEMAKERS

In 1977, the legislature passed House Joint Resolution 38, recognizing the "importance of the role of housewife and mother and urg(ing) other legislative bodies to join it in supporting legislation that would reaffirm and strengthen the solidarity of the home." Exactly what legislation was envisioned by the supporters of this resolution is uncertain.

However, the 1977 legislature began the process of dealing with the special problems of women in the home. A pilot program was created to attempt to meet the needs of the growing groups of individuals known as "displaced homemakers". [HB 569] The legislation defined their problems well:

"The legislature finds that there is an ever-increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" in their middle years through divorce, death of spouse, or other loss of family income. As a consequence, displaced homemakers are very often without any source of income; they are ineligible for categorical welfare assistance; they are subject to the highest unemployment rate of any sector of the work force; they face continuing discrimination in employment because they are older and have no recent paid work experience; they are ineligible for unemployment insurance because they have been engaged in unpaid labor in the home; they are ineligible for social security because they are too young, and many will never qualify for social security because they have been divorced from the family wage earner; they have often lost their rights as beneficiaries under employers' pension and health plans through divorce or death of spouse, despite many years of contribution to the family well-being; and they are often ineligible for medicaid and are generally unacceptable to private health insurance plans because of their age."

In addition, the legislation explicitly recognized the value of the contribution of homemakers to society. A displaced homemaker is defined as one who worked at home for at least 7 years providing a family member or members with unpaid household services; is not gainfully employed; has had or would have difficulty finding paid employment; and was once dependent on the income of another family member but no longer is, or was dependent on federal assistance but is no longer eligible.

The money appropriated for this program was to go to non-profit agencies who have particularly served women, if possible. The recipients were to develop multipurpose centers providing displaced homemakers with job counseling, training, placement services, and general assistance in finding help for other problems (such as health, finances, etc.)

The original appropriation request was $375,000 for the two years until June 30, 1979, but that was reduced to $30,000, conditioned on receipt of federal funds for the program. If the federal funding was not forthcoming, the $30,000 was to revert to the general fund and never be used for the pilot program. The federal funds did not come through and no pilot programs were created pursuant to HB 569.

An attempt to continue state funding for the pilot program for two more years was killed by the 1979 legislature (HB 665). The Employment and Training Division of the Department of Labor and Industry, however, has utilized federal funds for pilot projects to seed two displaced homemaker programs, one in Billings and one in Missoula. If they enjoy some success, there is a chance, at least, that the evidence they provide may induce the 1981 legislature to recommit state money in this direction.

F. BATTERED SPOUSES

In 1977, a study to identify the scope of the problems of battered spouses and their families and to propose appropriate remedies was funded by the Board of Crime Control, and the Departments of Community Affairs, Social and Rehabilitation Services, and Institutions. The resulting report, "A Study of Spouse Battering in Montana", written by Carol Mitchell and Martha Adrian, was published in 1978 and was closely followed by the creation of an on-going volunteer task force, (supported by SRS staff), currently chaired by Caryl Borchers of Great Falls. The study and the task force in particular were instrumental in inducing the 1979 legislature to enact what are apparently some of the law, since it is temporary, was not given an MCA number.)

First, the 1979 Legislature charged the Department of Social and Rehabilitation Services (SRS) with the duty of collecting and analyzing statistics on domestic violence and spouse abuse from state and local social service agencies over the next four years (until July 1, 1983). (The law, since it is temporary, was not given an MCA number).

Second, a grant program was established to fund locally controlled

programs, governmental or non-governmental, aimed at dealing with domestic violence. SRS makes the determination whether a given program deserves a grant, based on need, merit, and administrative design and efficiency. As for the character of the program, the statute itself does not limit the type of services which may be provided by a grant-eligible program, but suggests the following:

(i) counselling for victims or their spouses;
(ii) shelters for victims;
(iii) advocacy to assist victims in obtaining services and information;
(iv) education programs.

SRS has adopted rules establishing criteria for receiving grants and for services which are to be included, and anyone interested in obtaining a grant or otherwise concerned about such programs should examine them. The deadline for grant applications in 1979 was August 15, with final decisions being made by September 15. In subsequent years, the application deadline will be May 15, decisions being finalized by June 15.

One-fifth of the cost must be covered by the local community, but non-monetary, "in-kind" contributions such as labor qualify as contributions. The legislature appropriated $72,000 for each of the next two fiscal years—1980 and 1981—to be doled out by SRS, no more than 5% of which may be spent by the department to cover administrative costs. Nine dollars of every marriage license fee goes into the state general fund to help fund the state share of the grant program. [40-1-202; 40-2-401 through 40-2-405]

Third, as already noted in the subchapter on marital relations, the former law, which stated that neither spouse could be excluded from the other's dwelling, was amended to allow such an exclusion if ordered by the court. [40-2-201]

Finally, changes made in 1979 and fully discussed in the chapter on rape now allow one spouse to sue another for damages from assault, though criminal prosecution is still not possible unless the couple is living apart at the time. [40-2-109 and 45-5-506]

IX. UNIFORM PROBATE CODE

[Title 72, Chapters 1-5]

The old statutes dealing with wills, inheritance, and probate proceedings were replaced by the Uniform Probate Code through action by the 1974 legislature. The Code itself was not effective until July 1, 1975. It is intended to make the handling of estates simpler and easier and to eliminate problem areas in the old law. It also, as in the case of the other uniform laws previously mentioned, eliminates provisions that discriminated against one sex or the other and, in the case of statutes intended to provide protection for one sex, reworked the law to provide the same or better protection to both sexes.

The probate code is far too extensive to deal with in full here. The major areas of dicrimination in the old law will be outlined below, along with the treatment of those areas under the new code.

(1) **Dower.** Dower was the right of a wife to 1/3 of the real estate owned by her husband at any time during their marriage, except for that land to which she had relinquished her right and allowed to be sold. However, dower did not give her full ownership rights to the property (including the right to sell it free and clear), but only gave the widow the right to use the one-third she chose for the rest of her life. The widow's right to dower was intended to protect her from being disinherited by her husband, by being left out or short-changed in his will. It was an impractical right on two major grounds: it tied up the title to her husband's land during her lifetime and ignored the fact that, in this day and age, the bulk of a husband's estate is likely to be in personal, rather than real, property. A widow had the option, when her husband died, to elect to receive her dower share of his property rather than accept what, if anything, he had left her in his will. If she elected to do so, she would also receive the share of his personal property to which she was entitled, under the statutes, if he had died without a will (intestate). However, in no case could she garner more than 2/3 of the estate, after all claims against the estate, administration expenses and taxes had been paid. If

there were no children, the widow had another option—to give up her dower right and accept 1/2 of the real estate remaining after the payment of all debts and claims against her husband.

The Uniform Probate Code (UPC) eliminated dower entirely, and gave a similar, but more effective, protection to both spouses. [72-2-701 and 72-2-702] Basically, if a married person living in Montana dies, the surviving spouse has a right of election to take 1/3 of the "augmented estate", under certain conditions, instead of abiding by any will the deceased might have made. An augmented estate includes personal property and property transferred during that marriage in transactions which can be used to avoid the use of a will and defeat the right of the surviving spouse to a share. Therefore property transferred, but in which the deceased retained an interest and for which he or she received less than its full value, is included in the augmented estate. Also included is property transferred within three years of death to any one recipient that amounts to more than $3000 in the aggregate. Life insurance, pensions, etc. are **not** included in the estate, since they are rarely devices to avoid a will. [72-2-705] What is included and subtracted from an augmented estate is fairly complicated and should be discussed with a lawyer if one is contemplating taking his or her elective share. Notice of intent to take an elective share must be made within six months of the date notice went out to creditors with claims against the estate, or within one year of the date of death, whichever occurs first. [72-2-707]

Election to take an elective share of the estate does not prevent the surviving spouse from receiving what was granted him or her under the will, unless the petition for an elective share expressly says so. The election also does not affect entitlement to the homestead allowance, property exempt from creditors' claims and a family allowance. [72-2-704]

(2) **Homestead allowance.** Section 72-2-801 of the Uniform Probate Code provides for a homestead allowance from a deceased individual's estate, reserved for that individual's spouse, or minor and/or dependent children if there is no surviving spouse. The 1977 legislature moved the allowance up to $20,000 from $5,000, to conform to the dollar amount of the homestead exemption discussed in Chapter VII of this booklet. The homestead allowance is exempt from and has priority over any claims that may exist against the estate (debts owed by the deceased, etc.) and is in addition to any other share the spouse or children may have inherited, unless the will states otherwise, if one is in existence.

(3) **Wills.** One of the old statutes limited the terms of the will of a

married woman, and two others dealt with the effect of marriage on wills written prior to the union. All repealed, they were as follows:

91-102, RCM 1947. Wills made by married women. This statute allowed a wife to make a valid will but prohibited her from depriving her husband, through the will, of more than 2/3 of her own real estate or personal property. The provision is roughly comparable to a woman's dower right to at least 1/3 of her husband's real estate, but with a difference—a husband could write a will which denied his wife 1/3 of the real estate but, for instance, left her $500,000. She could elect to accept the will rather than the dower share, or vice versa. A woman, on the other hand, was barred by former sec. 91-102 from even writing a will giving her husband less than 1/3 of her private property. In addition, she could not grant him less than 1/3 of her **personal** property, a restriction not placed on husbands.

91-128, RCM 1947. Effect of man's marriage on his will. A will made by a man before he married would be revoked only if he died before his wife, and would not be revoked even then if she had been provided for by marriage contract, in the will, or mentioned in it in some way indicating he did not intend to provide for her.

91-129, 1947. Effect of woman's marriage on her will. A will executed by a woman, on the other hand, was automatically and unconditionally revoked on the date of her marriage.

Section 72-2-601 of the UPC protects the spouse (male or female) unprovided for in a will made before the marriage. The omitted spouse will receive the same share of the estate he or she would have received had there been no will at all, unless the will shows the omission was intentional or the spouse had been provided for by property transfers outside the will and the intent of the deceased that that property take the place of a transfer by will is evident.

(4) **Intestate succession.** Two of the old statutes dealt with the inheritance rights of illegitimate children where no will had been made. Now repealed, they were:

91-404, RCM 1947. Illegitimate children to inherit in certain events. If the father of an illegitimate child made written acknowledgment of paternity, the child was his heir; on the other hand, the child was always the heir of his mother. Such a child would **not** inherit, as his parents' representative, from their relatives unless the parents married and the father acknowledged or adopted him.

Under the UPC (sec. 72-2-213), an illegitimate child is considered a child of the father if the natural parents married before or after its birth, or if the father's paternity was established in court before his death, or after his death if there is clear and convincing proof of some kind of that paternity. In other words, if one of the above conditions was met, the child was to be treated as if he or she were legitimate—unlike 91-404, which limited a child's right to inherit as a full family member unless the father acknowledged his offspring. The UPC added a provision worth noting—a father and his kindred cannot inherit from an illegitimate child, even though paternity has been established, unless the father has openly treated the child as his own, and has not refused to support it.

91-405, RCM 1947. Mother successor to illegitimate child. If an illegitimate child died intestate before the mother, had not been acknowledged or adopted by his father, and had no children of his own, the mother inherited the estate.

The UPC [sec. 72-2-213] appears to grant the mother the right to inherit from her child, unconditionally, but the father must meet the standard explained above, in essence having to have made some positive overture toward his child before he merits inheriting anything from it.

Two more old statutes dealt with who could be an administrator of an estate for which there was no will, and were repealed:

91-1401, RCM 1947. Order of persons entitled to administer. If a person died intestate, an administrator had to be appointed for the estate. The statute listed persons from whom the appointment had to be made, in order of preference. Brothers were preferred over sisters.

91-1402, RCM 1947. Preference of persons equally entitled. If a choice of administrator had to be made between persons equally entitled to the post, males were to be preferred over females.

The UPC [sections 72-3-501 through 72-3-508] eliminates all sex bias from the preference listing.

(5) **Guardians.** Where a guardian had to be appointed for a child in a probate proceeding, fathers were definitely preferred over mothers, as follows:

91-4605, RCM 1947. Parents entitled to guardinship. A father was entitled to guardianship of his child, the mother having the right only if the father were dead.

91-4506, RCM 1947. Nomination by parent. A parent could nominate a guardian for the child, to take effect when the parent died. If the child were legitimate, the nomination had to be by the father with the mother's written consent, or by either parent if the other were dead or incapable of consent. If the child were illegitimate, the mother alone had the right to appoint the guardian.

91-4515, RCM 1947. Rules of awarding custody or appointing guardian of minor. If parents were contesting each other's right to custody or guardianship of their child, other things being equal, if the child was very young it should go to the mother, but if it was old enough to be educated and trained for an occupation, then to the father.

72-5-211 allows either parent to appoint a guardian for a minor child by will, regardless of the sex of the parent or the legitimacy of the child. If both parents are dead, the appointment of the one who died last has priority.

There are no parallel provisions to 92-4605 and 91-4515, RCM 1947, above. The UPC regards a guardian as someone needed to protect the rights of a child when no one else has parental rights of custody, due to curcumstances or court order.

X. Child Care and Domestic Service

A. DOMESTIC SERVICE [Section 39-51-203]

As of January 1, 1978, domestic employees are no longer exempt from unemployment insurance coverage if either of the following circumstances exists:

(1) The domestic employee was paid at least $1,000 in cash during any quarter of the preceding or current calendar year; or

(2) The employer has other employees for whom unemployment insurance payments must be made, in which case, any domestic employees are covered as well, even if not paid $1,000 during any relevant quarter.

Therefore, for example, if you are a babysitter going into a home to care for children while your employer works, and you are paid $1,000 or more in a three-month period, unemployment insurance must also be paid for you.

B. CHILD CARE

(1) **Tax deduction.** Federal law allows a tax credit for child and dependent care expenses, while the same expenses qualify as **deductions** under state law. However, until 1979, neither state nor federal law allowed credit or deductions for payments made for babysitting or otherwise to the following individuals:

(1) son, daughter, or descendent of either;
(2) stepson or stepdaughter;
(3) brother, sister, stepbrother or stepsister;
(4) father, mother or ancestor of either;
(5) stepfather or stepmother;
(6) nephew or niece by blood;
(7) aunt or uncle by blood;
(8) son-, daughter-, father-, mother-, brother-, or sister-in-law.

They also disqualified credit or deductions for payments to anyone other

than a spouse who was a dependent and a member of the household that taxable year.

However, 1979 amendments to the **state** law (not federal) make it possible to deduct child and dependent care expenses when the payments are made to anyone **but** the following:

(i) a dependent child of the taxpayer who is under 19 years of age at the end of the taxable year, or is a student;

(ii) a dependent whose gross income for the year was less than $650. In other words, it is now possible, under state law, to deduct child care payments made to relatives who are **not** dependents of the taxpayer—which they are not if they do not receive over half of their support that taxable year from the taxpayer. The new provision is effective throughout calendar year 1979 onward. [15-30-121]

(2) **Day Care.** State law provides for day-care subsidies to families who are sufficiently low-income to qualify for state and/or federal financial support. The minimum payment, until December 31, 1980, is $4.50 per day for each child qualifying for state assistance and a flat $1 per day in addition for those meeting federal eligibility requirements. After December 31, 1980, the state minimum goes up to $5 per day. [53-4-514]

In 1979, additional funding was provided for day-care so that, as a minimum, families whose income is 150% or less of the level necessary to qualify for Aid to Families of Dependent Children would have **all** day-care costs paid for them, while families whose income is 75% or above of the state median income for families of that size would receive **no** additional funding, and families with incomes in between would receive partial payment scaled to their income. If you want to determine if your child is eligible for such assistance, contact the local welfare office or the state Department of Social and Rehabilitation Services. [53-4-516]

(3) **Foster care.** Licensed foster family homes were authorized by the 1979 legislature to receive the following:

(a) for a foster child under 13 years old, at least $150 per month in the fiscal year ending June 30, 1980, and $200 per month for the following year;

(b) for a foster child 13 years old or older (until 18 or graduated from high school, whichever is later), at least $200 per month for the fiscal year ending June 30, 1980, and $250 per month for the following year.

The intent was to increase foster care payments above present levels.

TABLE OF CORRESPONDING CODE SECTIONS

MCA, 1979	RCM, 1947	MCA, 1979	RCM, 1947
1-1-201(2)	12-217	25-13-801	93-5834
1-1-215	83-303	25-13-803 through	
1-5-206(1)	39-108	25-13-810	93-5836
1-5-206(2)	39-109	25-31-408	93-6711
1-5-207	39-113	27-1-223	17-504
2-2-302	59-519	27-1-412	17-807
2-8-101 through	82-4601 through	27-1-512	93-2809
2-8-122	82-4609	27-1-514(1)	64-209
7-3-4233	11-3112	27-1-514(2)	93-2808
7-4-2613	16-2902	27-1-514(3)	93-2807
7-4-2619	16-2905	27-1-515	64-209
7-4-4303(5)	11-802	27-19-306	93-4207
7-21-2215	84-3206	27-31-101	93-100-2
7-32-2121	16-2702	31-1-306	41-1506
10-2-102	71-2202	32-1-107	5-106
10-2-201 through		33-6-102(1)	40-4902
10-2-206	77-501	33-7-104	40-5305
10-2-401	80-1801	33-17-211	40-3312
10-2-501	71-120	35-10-502	63-402
13-1-112	23-3022	39-2-201(1)	41-1119
15-6-134(new)		39-7-202	41-2602
15-6-211(new)		39-7-209(new)	
15-30-121	84-4906	39-51-203	87-148
19-11-203	11-1928	39-71-736	92-707
19-11-502	11-1911	39-72-102	92-1303.1
19-11-601	11-1915	39-72-406	92-1311(2)
19-11-605	11-1927	39-72-702	92-1321
19-12-405	11-2025	40-1-101	48-302
20-25-503	75-8703	40-1-104	48-313
20-25-504	75-8704	40-1-105	48-315
20-25-506	75-8701	40-1-202	48-306
25-5-201	93-2803	40-1-211	48-148
25-5-202	93-2804	40-1-213	48-308
25-9-102	93-4707	40-1-301	48-309

MCA, 1979	RCM, 1947
40-1-401	48-310
40-1-402	48-311
40-1-403	48-314
40-1-404	48-312
40-2-102	36-103
40-2-103	36-119
40-2-104	36-120
40-2-107	36-128
40-2-108	36-127
40-2-109(new)	
40-2-201	36-104
40-2-202	36-111
40-2-203	36-112
40-2-204	36-113
40-2-205	36-114
40-2-206	36-115
40-2-207	36-116
40-2-208	36-117
40-2-209	36-118
40-2-302	36-129
40-2-401 through 40-2-405(new)	
40-3-101 through 40-3-127	36-201 through 36-205
40-4-104	48-316
40-4-105	48-317
40-4-108	48-328
40-4-110	48-327
40-4-201	48-320
40-4-202	48-321
40-4-203	48-322
40-4-204	48-323
40-4-205	48-324
40-4-207	48-326
40-4-208	48-330
40-4-212	48-332
40-4-213	48-333
40-4-214	48-334
40-4-217	48-337
40-4-218	48-338
40-4-219	48-339
40-4-220	48-340
40-4-221(new)	
40-6-102	61-302
40-6-103	61-303
40-6-105	61-305
40-6-107	61-307
40-6-108	61-308
40-6-109	61-309
40-6-110	61-310
40-6-111	61-311
40-6-112	61-312
40-6-114	61-314
40-6-115	61-315
40-6-116	61-316
40-6-119	61-320
40-6-120	61-321
40-6-124	61-328
40-6-125	61-329
40-6-126	61-330
40-6-127	61-331
40-6-128	61-332
40-6-129	61-333
40-6-130	61-334
40-6-201	61-101
40-6-202	61-102
40-6-211	61-104
40-6-217	61-117
40-6-221	61-105
40-7-101 through 40-7-125	61-401 through 61-425
40-8-111	61-205
40-9-101 (new)	
40-9-102 (new)	
45-5-304	94-5-305
45-5-502	94-5-502
45-5-503	94-5-503
45-5-506	94-5-506
45-5-601	94-5-602
46-6-402	95-609
46-15-401	95-1814
46-15-402	95-1815
46-15-403	95-1816
46-15-411	95-1813
46-18-222	95-2206.18
49-1-102	64-301
49-2-101	64-305
49-2-303	64-306

MCA, 1979	RCM, 1947
49-3-201	64-317
49-3-202	64-320
49-3-203	64-323
49-3-204	64-321
49-3-205	64-318
49-3-206	64-324
49-3-207	64-319
49-3-208	64-322
49-3-301	64-325
49-3-303	64-329
70-15-303	67-903 and 67-904
70-20-106	67-1603
70-20-107	67-1604
70-27-111	93-9706
70-32-102	33-125
70-32-103	33-102
70-32-105	33-126
70-32-106	33-127
70-32-213	33-121
71-3-302	45-603
71-3-503	45-511
71-3-805	45-808
72-2-213	91A-2-109
72-2-601	91A-2-301
72-2-701	91A-2-112
72-2-702	91A-2-201
72-2-704	91A-2-206
72-2-705	91A-2-202
72-2-707	91A-2-205
72-2-801	91A-2-401
72-3-501 through 72-3-508	91A-3-203
72-5-211	91A-5-202

INDEX

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3

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